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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION
* * *
HOBART CORPORATION, et al.,
Plaintiffs, vs.
CASE NO. 3:13-cv-00115-WHR
THE DAYTON POWER AND LIGHT COMPANY, et al.,
Defendants.
* * *
Rule 30(b)(6) deposition of Valley Asphalt Corporation through DAN CRAGO, P.E., Witness herein, called by the Plaintiffs for cross-examination pursuant to the Rules of Civil Procedure, taken before me, Karen M. Rudd, a Notary Public in and for the State of Ohio, at the offices of Sebaly, Shillito & Dyer, 1900 Kettering Tower, 40 North Main Street, Dayton, Ohio, on Wednesday, February 15, 2017, at 9:39 a.m.
* * *

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3 BY MR. LEWIS:..... 205
4 BY MR. MERRILL:..... 211
5 BY MR. ANDREASEN:..... 281
6 BY MR. LEWIS:..... 287
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11 EXHIBITS MARKED
12 (Thereupon, Plaintiffs' Exhibit 1, 13 Notice of Rule 30(b)(6) Deposition 14 of Valley Asphalt Corporation, was 15 marked for purposes of 16 identification.)..... 15
17 (Thereupon, Plaintiffs' Exhibit 2, 18 Defendant Valley Asphalt 19 Corporation's Responses to 20 Plaintiffs' Interrogatories and 21 Requests for Production of 22 Documents, was marked for purposes 23 of identification.)..... 21
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1 (Thereupon, Plaintiffs' Exhibit 3, 2 Defendant Valley Asphalt 3 Corporation's Responses to Defendant 4 The Dayton Power and Light Company's 5 First Set of Combined Discovery 6 Requests, was marked for purposes of 7 identification.)..... 22
8 (Thereupon, Plaintiffs' Exhibit 4, 9 lease between Cyril J. Grillot and 10 Horace J. Boesch and Valley Asphalt 11 Corporation, was marked for purposes 12 of identification.)..... 41
13 (Thereupon, Plaintiffs' Exhibit 5, 14 drawing by Bowser-Morner titled 15 Approximate Boundary of Valley 16 Asphalt Site, was marked for 17 purposes of identification.)..... 49
18 (Thereupon, Plaintiffs' Exhibit 6, 19 printout from Google Maps, was 20 marked for purposes of 21 identification.)..... 59
22 (Thereupon, Plaintiffs' Exhibit 7, 23 Contract to Purchase Real Estate, 24 was marked for purposes of 25 identification.)..... 73

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1 (Thereupon, Plaintiffs' Exhibit 8, 2 copy of 2010 aerial photograph, was 3 marked for purposes of 4 identification.)..... 75
5 (Thereupon, Plaintiffs' Exhibit 9, 6 larger copy of 2010 aerial 7 photograph, was marked for purposes 8 of identification.)..... 79
9 (Thereupon, Plaintiffs' Exhibit 10, 10 Environmental Remediation Report at 11 Valley Asphalt prepared by David M. 12 Scardino, was marked for purposes of 13 identification.)..... 124
14 (Thereupon, Plaintiffs' Exhibit 11, 15 two-page document, document entitled 16 Sewer Line, Valley Asphalt 17 Corporation, Dryden Road Plant, and 18 email from NASAH@marasconewton.com 19 to jurensj@jrjnet.com sent 20 October 18, 2001, was marked for 21 purposes of identification.)..... 134
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1 (Thereupon, Plaintiffs' Exhibit 12,
 2 copy of a folder labeled Valley
 3 Asphalt Corporation and
 4 correspondence, was marked for
 5 purposes of identification.)..... 142
 6 (Thereupon, Plaintiffs' Exhibit 13,
 7 letter to John R. Jurgensen Company
 8 from the United States Environmental
 9 Protection Agency dated December 10,
 10 2002, was marked for purposes of
 11 identification.)..... 148
 12 (Thereupon, Plaintiffs' Exhibit 14,
 13 letter to US Environmental
 14 Protection Agency from Daniel T.
 15 Crago dated December 11, 2002, was
 16 marked for purposes of
 17 identification.)..... 152
 18 (Thereupon, Plaintiffs' Exhibit 15,
 19 letter to Dan Crago from the United
 20 States Environmental Protection
 21 Agency, was marked for purposes of
 22 identification.)..... 157
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1 (Thereupon, Plaintiffs' Exhibit 20,
 2 letter to Martin Lewis from Richard
 3 Karl dated March 22, 2013, with
 4 attached unilateral administrative
 5 order, was marked for purposes of
 6 identification.)..... 180
 7 (Thereupon, Plaintiffs' Exhibit 21,
 8 letter to Martin Lewis from the
 9 United States Environmental
 10 Protection Agency dated July 13,
 11 2016, was marked for purposes of
 12 identification.)..... 187
 13 (Thereupon, Plaintiffs' Exhibit 22,
 14 letter to Leslie Patterson from
 15 Martin Lewis dated March 26, 2015,
 16 was marked for purposes of
 17 identification.)..... 189
 18 (Thereupon, Plaintiffs' Exhibit 23,
 19 letter to Valley Asphalt Corporation
 20 from Richard Doran dated April 14,
 21 1999, was marked for purposes of
 22 identification.)..... 195
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1 (Thereupon, Plaintiffs' Exhibit 24,
 2 contract between Valley Asphalt and
 3 Bowser-Morner, was marked for
 4 purposes of identification.)..... 197
 5 (Thereupon, Plaintiffs' Exhibit 25,
 6 Form 1: Building Physical Survey
 7 Questionnaire, was marked for
 8 purposes of identification.)..... 200
 9 (Thereupon, Deposition Exhibit 26,
 10 Environmental Remediation Report at
 11 Valley Asphalt prepared by David M.
 12 Scardino dated September 5th, 2000,
 13 was marked for purposes of
 14 identification.)..... 227
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 16 memo from Matt Justice to Karen
 17 Cibulskis dated January 24, 2006,
 18 was marked for purposes of
 19 identification.)..... 241
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 21 phone conversation record dated
 22 June 12, 2012, was marked for
 23 purposes of identification.)..... 248
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1 (Thereupon, Deposition Exhibit 29,
 2 email string, the first email on the
 3 document from Madelyn Smith to
 4 Leslie Patterson sent April 7, 2014,
 5 was marked for purposes of
 6 identification.)..... 251
 7 (Thereupon, Deposition Exhibit 30,
 8 handwritten notes, was marked for
 9 purposes of identification.)..... 271
 10 (Thereupon, Deposition Exhibit 31,
 11 handwritten notes, was marked for
 12 purposes of identification.)..... 273
 13 (Thereupon, Deposition Exhibit 32,
 14 letter to Daniel Crago from the
 15 United States Environmental
 16 Protection Agency dated October 19,
 17 2012, was marked for purposes of
 18 identification.)..... 275
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1 DAN CRAGO, P.E.
 2 of lawful age, Witness herein, having been first
 3 duly cautioned and sworn, as hereinafter
 4 certified, was examined and said as follows:

5 CROSS-EXAMINATION

6 BY MR. ROMINE:

7 Q. Good morning, Mr. Crago.

8 A. Good morning.

9 Q. My name is David Romine, Dave
 10 Romine. I represent Hobart Corporation,
 11 Kelsey-Hayes Company, and NCR Corporation in a
 12 lawsuit called Hobart Corporation and others
 13 versus Dayton Power and Light Company and
 14 others.

15 A. Okay.

16 Q. We are here to talk about a place
 17 called -- the Superfund site called the South
 18 Dayton Dump and Landfill. Are you with me so
 19 far?

20 A. Yes, sir.

21 Q. Okay. Great. So have you ever
 22 had your deposition taken before?

23 A. I have.

24 Q. So you know the format then. It's
 25 question and answer. I'm going to be asking

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1 you some questions and some of the other
 2 lawyers may have some questions, and it's
 3 important that you understand the question.
 4 It's okay to say that you don't understand it.
 5 It's not a test, so say what you know. It's
 6 okay to say that you don't know. It's also
 7 okay to ask me to repeat it if you don't hear
 8 it or understand.

9 We will be taking turns, so even
 10 if you can anticipate what my question is going
 11 to be, please wait for me to finish.

12 A. Okay.

13 Q. And then I'll do the same. Even
 14 if I know where you're going with your answer,
 15 I'll wait for you to finish before asking my
 16 next question. That way the court reporter can
 17 take it down more accurately.

18 A. That sounds great.

19 Q. Okay. And also it's not an
 20 endurance test, so if you need to take a break
 21 for any reason, we can do that too.

22 A. Okay.

23 MR. EDDY: This is Bob Eddy. I'm
 24 sorry to interrupt, but I missed the witness's
 25 name.

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1 MR. ROMINE: Go ahead.

2 THE WITNESS: My name is Dan
 3 Crago.

4 MR. LEWIS: Spell it.

5 THE WITNESS: It's C R A --

6 MR. EDDY: Can you spell that?
 7 THE WITNESS: The last name is
 8 C R A G O. And I'm the director of quality
 9 control and environmental for Valley Asphalt
 10 Corporation based out of Cincinnati.

11 MR. EDDY: Thank you very much.

12 THE WITNESS: Do you want our home
 13 address?

14 MR. ROMINE: Sure, go ahead.

15 THE WITNESS: Our corporate
 16 address in Cincinnati is 11641 Mosteller Road,
 17 and that is in Cincinnati, it's 45241.

18 (Thereupon, Plaintiffs' Exhibit 1,
 19 Notice of Rule 30(b)(6) Deposition of Valley
 20 Asphalt Corporation, was marked for purposes of
 21 identification.)

22 MR. ROMINE: For those of you on the
 23 telephone, I'm marking as Exhibit 1 -- or the
 24 court reporter has marked as Exhibit 1 the notice
 25 of Rule 30(b)(6) deposition of Valley Asphalt

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1 Corporation.

2 BY MR. ROMINE:

3 Q. Before we get into that, I wanted
 4 to ask you, Mr. Crago, what kind of case did
 5 you testify in at your earlier deposition or
 6 depositions?

7 A. Early on in my career at Valley
 8 Asphalt, I was actually brought in on a court
 9 case. One of our secretaries had a driveway
 10 and a garage built. The concrete that the
 11 builder used was -- it was not placed properly,
 12 so I was brought in as an expert witness. I
 13 have also had my deposition taken on some
 14 zoning issues directly related to the company.

15 Q. Okay. So it sounds like those
 16 haven't been environmental related cases.

17 A. That is correct.

18 Q. Have you had a chance to take a
 19 look at Exhibit 1?

20 A. Yes, sir, I have.

21 Q. And have you seen that before?

22 A. Yes, sir, I have.

23 Q. And are you prepared today to
 24 testify on behalf of Valley Asphalt Corporation
 25 with regard to the topics listed in Exhibit 1?

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1 A. I am prepared to respond.
 2 Q. And you are a Valley Asphalt
 3 employee now?
 4 A. Yes, sir.
 5 Q. And how long have you worked for
 6 Valley Asphalt?
 7 A. I started with Valley Asphalt in
 8 April of 1993. So almost 24 years.
 9 Q. And turning back the clock a
 10 little bit, did you go to high school?
 11 A. Yes, sir, I did.
 12 Q. And where did you go to high
 13 school?
 14 A. I graduated from Marietta High
 15 School in Marietta, Ohio, the very southeast
 16 corner of Ohio.
 17 Q. Southeast corner of Ohio?
 18 A. It's right on the West Virginia
 19 border.
 20 Q. Okay. The Ohio River?
 21 A. Yes, sir.
 22 Q. And what town or place in West
 23 Virginia is across the Ohio River?
 24 A. There's -- the biggest town is
 25 Parkersburg, but then directly across the river

1 is a very small town called Williamstown.
 2 Q. And you graduated from Marietta
 3 High School?
 4 A. Yes, sir, I did.
 5 Q. And did you go to college after
 6 that?
 7 A. Yes, sir.
 8 Q. Where did you go to college?
 9 A. I went to Ohio State University in
 10 Columbus, Ohio, main campus.
 11 Q. And did you graduate from Ohio
 12 State?
 13 A. Yes. I graduated in 1986 with a
 14 bachelor's degree in civil and environmental
 15 engineering.
 16 Q. And did you get employment
 17 directly after you got your bachelor's degree?
 18 A. Yes, sir. I started -- I actually
 19 accepted a position when I was finishing
 20 college.
 21 Q. And where was that?
 22 A. The company, it was called Economy
 23 Forms Corporation. They had offices in
 24 Columbus, Ohio, off of Zane Trace Drive on the
 25 west side. I started as a district engineer in

1 1986.
 2 Q. And what were your duties as
 3 district engineer?
 4 A. The company provided concrete
 5 forming apparatus for architectural concrete
 6 pours. So I would do a lot of design work for
 7 stadiums, large highway projects, you know, big
 8 dam projects. Anything where you had a lot of
 9 architectural concrete that was exposed that
 10 you wanted smooth surface, we would do steel
 11 forms for those pours.
 12 So I worked my first year there as
 13 a district engineer in Columbus, and then with
 14 the same company I transferred to Michigan for
 15 about four more years.
 16 Q. And where were you based in
 17 Michigan?
 18 A. I was on the outskirts of Detroit.
 19 I lived in Farmington Hills. My office was in
 20 the same area. So it's north -- kind of
 21 northwest of Detroit heading toward Lansing.
 22 Q. And so that brings you up to about
 23 1992?
 24 A. That is correct. I worked one
 25 year with a supply company in Michigan also

1 doing design work in construction.
 2 Q. So that would have been '92, '93?
 3 A. Yes, sir.
 4 Q. And what was the name of that
 5 company?
 6 A. That company is called
 7 Construction Supply Incorporated, or CSI. They
 8 are in Highland, Michigan.
 9 Q. And then after that, I take it you
 10 got hired by Valley Asphalt?
 11 A. Yes, sir.
 12 Q. And what was your title when you
 13 got hired into Valley Asphalt?
 14 A. When I was hired in 1993, I was
 15 the manager of quality control and
 16 environmental for Valley Asphalt.
 17 Q. And where did you show up to work
 18 every day?
 19 A. My office was at our main
 20 corporate office, which is 11641 Mosteller Road
 21 in Cincinnati.
 22 Q. Was your main office -- not your
 23 main office, but was your main place of work
 24 ever in Dayton?
 25 A. I frequented Dayton, because we

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1 have multiple site locations, one of which is
 2 our Dryden Road facility. So I did have
 3 occurrence to go to the site.

4 Q. Was that ever your main office?

5 A. No, sir.

6 Q. Not Valley Asphalt's main office,
 7 but Dan Crago's main office.

8 A. No, Dryden Road was never my main
 9 office.

10 MR. ROMINE: Did someone just join
 11 the telephone conference?

12 MR. THUMANN: It's Rob Thumann.
 13 Sorry I'm late.

14 MR. LEWIS: Rob, who do you
 15 represent?

16 MR. THUMANN: Franklin Iron &
 17 Metal Corporation.

18 MR. LEWIS: Thank you.

19 (Thereupon, Plaintiffs' Exhibit 2,
 20 Defendant Valley Asphalt Corporation's
 21 Responses to Plaintiffs' Interrogatories and
 22 Requests for Production of Documents, was
 23 marked for purposes of identification.)

24 MR. ROMINE: For those of you on
 25 the telephone, I've asked the court reporter to

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1 mark as Exhibit 2 Defendant Valley Asphalt
 2 Corporation's responses to plaintiffs'
 3 interrogatories and requests for production of
 4 documents.

5 BY MR. ROMINE:

6 Q. Mr. Crago, have you seen Exhibit 2
 7 before?

8 A. Yes, sir, I have.

9 Q. And are the responses here by
 10 Valley Asphalt true and correct?

11 A. Yes, sir, they are.

12 Q. Do you have any corrections you'd
 13 like to make to Valley Asphalt Corporation's
 14 responses since the time these were prepared?

15 A. I do not.

16 (Thereupon, Plaintiffs' Exhibit 3,
 17 Defendant Valley Asphalt Corporation's
 18 Responses to Defendant The Dayton Power and
 19 Light Company's First Set of Combined Discovery
 20 Requests, was marked for purposes of
 21 identification.)

22 MR. ROMINE: I have asked the
 23 court reporter to mark as Exhibit 3 defendant
 24 Valley Asphalt Corporation's responses to
 25 defendant The Dayton Power and Light Company's

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1 first set of combined discovery requests.

2 BY MR. ROMINE:

3 Q. And my question to you, Mr. Crago,
 4 is have you seen this before?

5 A. Yes, sir, I have.

6 Q. And are defendant Valley Asphalt
 7 Corporation's answers in this document true and
 8 correct?

9 A. Yes, sir, they are.

10 Q. And are there any corrections
 11 you'd like to make to your responses -- not to
 12 your responses, but to Valley Asphalt
 13 Corporation's responses since this was
 14 prepared?

15 A. Not at this time.

16 Q. What is Valley Asphalt's business?

17 A. Valley Asphalt is a producer of
 18 hot mix asphalt. We basically will take stone,
 19 gravel, limestone products, dry them in a
 20 rotary drum or hot mix asphalt plant. We'll
 21 mix liquid asphalt with that dry aggregate and
 22 recycled material and produce a hot mix asphalt
 23 that's used for roadway construction, airport
 24 paving, bike paths, driveways.

25 Q. And does that hot mix asphalt

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1 manufacturing take place in Dayton?

2 A. Yes, sir, it does.

3 Q. And what's the address of the
 4 Dayton facility of Valley Asphalt?

5 A. Our Valley Asphalt plant number
 6 six is located at 1901 Dryden Road in Dayton.

7 Q. When you say plant number six,
 8 does that refer to Valley Asphalt's plant
 9 number six?

10 A. Yes, sir.

11 Q. Okay. So I guess Valley Asphalt
 12 has plants one, two, three, four, five in other
 13 places other than Dayton?

14 A. We have other plants, and it's
 15 kind of a chronological -- we don't have a
 16 plant one or a plant two anymore because of
 17 time constraints and -- as they expire, we
 18 retire the name and the number.

19 Q. So right now there's a plant six
 20 in Dayton?

21 A. Yes, sir.

22 Q. Was there another differently
 23 numbered plant in Dayton before today?

24 A. No, it's always been called Valley
 25 Asphalt plant number six.

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1 Q. Does plant number six engage in
2 anything other than hot mix asphalt production?

3 A. No, Valley plant number six only
4 produces hot mix asphalt.

5 Q. And is Valley Asphalt Corporation
6 in the business of doing things other than hot
7 mix asphalt in other locations?

8 A. Yes, sir.

9 Q. Is there -- is there such a thing
10 as cold mix asphalt production?

11 A. Yes, sir.

12 Q. Has plant number six ever done
13 cold mix?

14 A. I'm not aware of any cold mix ever
15 being produced at Valley Asphalt plant number
16 six on Dryden Road.

17 Q. Does Valley Asphalt do cold mix in
18 other places?

19 A. Yes, sir, we do.

20 Q. Just generally what's the
21 difference between hot mix and cold mix?

22 A. Hot mix is at an elevated
23 temperature, and you typically will -- you will
24 heat the aggregate maybe to 400 degrees, and
25 then you will mix the liquid asphalt in with

1 A. There's two general types of hot
2 mix plants. One is a batch plant and one is a
3 drum plant. A batch plant actually has a
4 batching tower. So after the aggregate is
5 dried and before you mix the liquid asphalt
6 into it, it goes into a pug mill, and you batch
7 out individual truckloads.

8 A drum plant actually is a
9 continuous process, and the end product goes
10 into a silo that's loaded out. So a batch
11 plant makes individual truckloads, where a drum
12 plant will make a silo full of material that's
13 batched into trucks.

14 Q. And so was there a silo at plant
15 six in 1956?

16 A. There was not a silo early on in
17 the process.

18 Q. And was there a silo built at some
19 point?

20 A. Yes, sir.

21 Q. And when was that?

22 A. When I looked at the documents of
23 when we purchased the price [sic], I saw an
24 investigation that was done by Bowser-Morner
25 where they actually drilled down through the

1 it. And then that material is only good at an
2 elevated temperature. So as it cools down to
3 ambient temperature, it becomes very stiff and
4 it turns into your final product, whether it's
5 a road or highway or airport.

6 Cold mix is a -- it's designed for
7 temporary use. So it may be used over the
8 winter timeframe where it's very cold outside,
9 and you can't run your hot mix plant, so you
10 will use cold mix to fix a pothole or a
11 temporary pipe break or something like that.
12 And cold mix typically stays pliable at ambient
13 temperatures.

14 Q. When you say 400 degrees, is that
15 Fahrenheit?

16 A. Yes, sir.

17 Q. When did Valley Asphalt start
18 plant number six?

19 A. I believe we moved a plant on site
20 in approximately 1956.

21 Q. And was that a hot mix plant?

22 A. Yes, sir, it was a hot mix batch
23 plant.

24 Q. And when you say a hot mix batch
25 plant, what does batch plant mean?

1 A. There's two general types of hot
2 mix plants. One is a batch plant and one is a
3 drum plant. A batch plant actually has a
4 batching tower. So after the aggregate is
5 dried and before you mix the liquid asphalt
6 into it, it goes into a pug mill, and you batch
7 out individual truckloads.

8 A drum plant actually is a
9 continuous process, and the end product goes
10 into a silo that's loaded out. So a batch
11 plant makes individual truckloads, where a drum
12 plant will make a silo full of material that's
13 batched into trucks.

14 Q. And so was there a silo at plant
15 six in 1956?

16 A. There was not a silo early on in
17 the process.

18 Q. And was there a silo built at some
19 point?

20 A. Yes, sir.

21 Q. And when was that?

22 A. When I looked at the documents of
23 when we purchased the price [sic], I saw an
24 investigation that was done by Bowser-Morner
25 where they actually drilled down through the

1 site and did a soil analysis to see the
2 stability of the existing site and tried to
3 calculate or determine, you know, what the
4 capability of the site to hold a silo. So the
5 Bowser-Morner report that I saw was in 1987,
6 September 29.

7 Q. So based on that report, you
8 could -- it's your conclusion that there was no
9 silo from approximately 1956 to 1987?

10 A. That is correct.

11 Q. And was there a silo built in
12 1987?

13 A. Yes, sir.

14 Q. Is there still a silo there today?

15 A. Yes. We have three silos on site,
16 and they are sitting on the footers that were
17 put in in the 1987 report. We actually put
18 footers down through the fill and into stable
19 ground underneath, and then we poured a slab on
20 top that supported the silos and also supported
21 the scale deck for the truck load-out.

22 Q. So when you first started working
23 for Valley Asphalt in 1993, at some point you
24 came to plant number six?

25 A. Yes, sir.

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1 Q. And you saw the silos there at
2 that time?
3 A. They were existing at that time.
4 Q. If I could ask you to look at
5 Exhibit 3, page seven.
6 A. Okay.
7 Q. And there's a question,
8 interrogatory 14, and there's a response, and I
9 want you to look at the second sentence of the
10 response. Dan Crago would have information, if
11 any, regarding the presence of any waste at the
12 site.
13 A. Yes.
14 Q. That refers to you?
15 A. Yes, sir.
16 Q. And you are the person who would
17 have knowledge of any waste at the site?
18 A. Yes, that is my responsibility for
19 the company.
20 Q. Okay. We will get more into that
21 later, but I just wanted to make sure I'm
22 talking to the right person.
23 A. Okay.
24 Q. Is there a person who is the
25 principal owner of Valley Asphalt Corporation?

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1 A. Yes, sir.
2 Q. And who is that?
3 A. Jim Jurgensen is the main owner of
4 the Valley Asphalt Corporation.
5 Q. If you turn the clock back to
6 1956, was there a person who was the main owner
7 of Valley Asphalt Corporation?
8 A. From my recollection, I believe it
9 may have been Jim Jurgensen's father, which is
10 John R. Jurgensen. I'm not sure exactly when
11 the transfer of ownership occurred.
12 Q. Have there been any principal
13 owners of Valley Asphalt Corporation since 1956
14 other than John R. Jurgensen and Jim Jurgensen?
15 A. No, sir.
16 Q. I've seen some reference in some
17 of the documents to a Jim Jurgensen, II.
18 A. Yes, sir.
19 Q. Is that the principal owner's son?
20 A. Yes, sir.
21 Q. Okay. But Jim Jurgensen, II, is
22 not the principal owner right now?
23 A. They are in transition, but I
24 believe Jim, Sr., still is principal and Jim,
25 if, has, you know, a corporate officer

WPA 0000000000
FCC 000 4021

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1 position.
2 Q. Okay.
3 A. To be honest with you, I don't
4 know where the direct ownership -- it's
5 privately held, and I'm not privy to that
6 information.
7 Q. I understand. Does Jim Jurgensen,
8 Sr. -- does he manage the company? Does he
9 work managing Valley Asphalt?
10 A. No, he doesn't. He's, I'll say,
11 semi-retired. He's -- his health is waning,
12 and he spends a fair amount of time south in
13 warmer weather.
14 Q. Did Jim Jurgensen, Sr., at some
15 point manage the company?
16 A. Yes, sir.
17 Q. And does Jim Jurgensen, II, manage
18 the company?
19 A. Yes, sir, he is currently managing
20 the company.
21 Q. Okay. And again, going back in
22 time based on what you've seen, did John R.
23 Jurgensen spend time managing the company when
24 he was around?
25 A. Yes, sir.

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1 Q. Do you happen to know when John R.
2 Jurgensen died?
3 A. I do not have that. It was -- it
4 predated my employment with the company, so I
5 know it predated 1993.
6 Q. So when you got there in 1993, Jim
7 Jurgensen, Sr., was the principal manager of
8 the company; is that --
9 A. Yes, sir.
10 Q. Is that fair?
11 A. He is the individual that hired
12 me, and he was the principal owner at that
13 time.
14 Q. Okay. And the principal owner of
15 Valley Asphalt, whether that be John R., Jim,
16 or Jim, Sr., their main office was in
17 Cincinnati?
18 A. Yes, sir. Our corporate office
19 has been at the Mosteller Road address I would
20 say from probably the mid '50s.
21 Q. Is there a person who is in charge
22 of plant number six?
23 A. We normally will have like a
24 manager on site.
25 Q. And who is that person today?

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1 A. That person is Mike Shafer. He is
2 the plant foreman that kind of oversees the
3 day-to-day operations.

4 Q. And going back to 1956, who was
5 that person?

6 A. I'm not aware of who that would
7 have been in 1956.

8 Q. Anyone before Mike Shafer?

9 A. Before Mike Shafer, it would have
10 been Kenny Eakins, E A K I N S.

11 Q. And is Mr. Eakins still an
12 employee of Valley Asphalt?

13 A. He is not.

14 Q. And when did Mr. Shafer take over
15 for Mr. Eakins?

16 A. I want to say Mike Shafer has been
17 in charge of that facility probably maybe eight
18 years -- seven or eight years.

19 Q. Okay. And how long was Mr. Eakins
20 in charge of plant number six?

21 A. I would say maybe 20 years.

22 Q. Okay. So going back to about
23 1990?

24 A. That would be -- yes, that would
25 be correct.

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1 Q. So when you started with Valley
2 Asphalt, Mr. Eakins was in charge of plant
3 number six?

4 A. That is correct.

5 Q. How about before Mr. Eakins?

6 A. I'm not aware of who was in charge
7 before Mr. Eakins.

8 Q. Does Valley Asphalt have any
9 records that would indicate who was in charge
10 of plant number six before Mr. Eakins?

11 A. No, I've gone through all the
12 documentation of all the site history and
13 everything else pertaining to that from a
14 management point of view. From an
15 environmental point of view, I know my
16 predecessor.

17 Q. You know your predecessor?

18 A. Yes, sir.

19 Q. And who was that?

20 A. Mel Levy.

21 Q. And is Mr. Levy still alive?

22 A. He is not.

23 Q. Is Mr. Eakins still alive?

24 A. I believe he is. I haven't spoken
25 to him in years.

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1 Q. Are there any -- other than
2 specifically Mr. Eakins, are there written
3 records identifying Valley Asphalt employees
4 let's say at the time -- at the time you were
5 hired? If I wanted to find out who was a
6 Valley Asphalt employee in 1993, are there
7 records that would show me that?

8 A. Are you talking generally, or are
9 you talking about at the Dryden Road facility?

10 Q. Let's start with Dryden Road.

11 A. I'm not aware of records, but
12 there may be. You know, I guess you could go
13 back through and look at financials and try to
14 determine who was maybe receiving checks, you
15 know, payment checks or weekly checks.

16 Q. Okay. So there may be payroll
17 records?

18 A. Yes, sir.

19 Q. And then just generally other than
20 just Dryden Road, are there any records that
21 would show who was a Valley Asphalt employee,
22 say, in 1993?

23 A. I would say our corporate office
24 would also have payroll checks. I'm not sure
25 if they keep those documents in print. I know

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1 just because of time and other constraints
2 they -- I don't know how long they keep their
3 records on the payroll side.

4 Q. So there may be -- those documents
5 may exist, they may not?

6 A. That is correct.

7 Q. Okay. And do those documents show
8 the address of the employees?

9 A. I don't know that they will.

10 Again, I'm not involved in the payroll side, so
11 I'm not aware of what they do or don't show.

12 Q. I'm just trying to get an idea of
13 if you found these records, would they show,
14 you know, the employee addresses? If they
15 lived in Moraine or Dayton, then you could sort
16 of make an educated guess that the person was
17 employed by plant six. But if they lived in
18 Cincinnati or Kentucky, you might think that
19 they live -- I'm sorry, that they worked at
20 some other plant.

21 A. Yeah. And I know a lot of our
22 facilities they will share employees, so, you
23 know, they may have worked at, you know, one or
24 two facilities that week. So it may not
25 distinguish which actual facility.

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1 Q. Okay. And how many people work at
2 the -- at plant number six today?
3 A. We probably have four employees on
4 site.
5 Q. And going back to 1956, has that
6 changed?
7 A. No, that's a pretty consistent
8 number to run an asphalt plant.
9 Q. Do you know where Mr. Eakins
10 lives?
11 A. I do not.
12 Q. Do you know if he is in Ohio?
13 A. I believe he lives in Ohio, but
14 his actual address, I don't -- I'm not aware
15 of.
16 Q. I think you mentioned there was
17 Mr. Shafer who was the plant foreman at plant
18 number six right now?
19 A. Yes, he's currently our foreman.
20 Q. There are about three other
21 employees?
22 A. Yes, sir.
23 Q. And what are their titles? What
24 do they do?
25 A. We typically will have a plant

1 operator that will be inside the control
2 building running the physical plant. We will
3 have a loader man that is in a front end loader
4 that will feed raw stock into the plant.
5 And then normally we will have
6 like a yard man that will interact between the
7 loader man and the plant operator if there's,
8 you know, belts that need to be checked or
9 motors that need to be checked, or anything
10 like that.
11 And then the fourth would be
12 Mr. Shafer kind of supervising. Then he would
13 be in and out. The supervisor is not on site
14 at all times.
15 Q. And when you say he is not on site
16 at all times, where does he go?
17 A. Typically our supervisors are
18 responsible for several different asphalt
19 plants, so I'm not sure exactly what other
20 plants Mike is responsible for, but I think he
21 has a couple other plants.
22 Q. If we went to plant number six
23 today, would it be in operation?
24 A. No, we are shut down today.
25 Q. Is that because plant number six

1 doesn't use the hot mix process in the winter
2 as you were describing earlier?
3 A. That is correct. It's very hard
4 to run an asphalt plant during the winter
5 months. Anytime you go below freezing, the
6 belts, the motors, the gears don't like to
7 operate. You have a lot of damage. And so we
8 typically will shut down the plants in late
9 November, early December, depending upon the
10 weather, and then we normally will start the
11 plants back up early April. Again, weather
12 dependent and project dependent.
13 Q. Other than Mr. Shafer, the three
14 other employees at plant six, those are
15 full-time plant six employees?
16 A. Yes, sir, they are full-time
17 employees.
18 Q. Going back to 1956, did Valley
19 Asphalt own the property on which plant six
20 operated in 1956?
21 A. My understanding is we did not own
22 the property. We were leasing or renting the
23 property that the plant sat on.
24 Q. And does Valley Asphalt own the
25 property on which plant six operates today?

1 A. We do own it today.
2 Q. And at what time did Valley
3 Asphalt buy the property on which plant six
4 operates?
5 A. My understanding is May of 1993,
6 Valley Asphalt purchased the property at which
7 plant six sits today.
8 Q. So right around the time you
9 started?
10 A. Yes, sir.
11 Q. Were you involved in the purchase
12 of the property at that time?
13 A. I was not.
14 Q. Were you aware at around that time
15 that Valley Asphalt bought or was buying the
16 property?
17 A. I was not aware of the purchase or
18 the process of the purchase going through.
19 Q. When did you first become aware of
20 that?
21 A. To be honest, probably ten years,
22 15 years later. I knew we had a plant there.
23 I knew it was an operating plant. I didn't
24 know the property that we sat on, whether we
25 owned it or leased.

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1 MR. ROMINE: Okay. Exhibit 4.
 2 (Thereupon, Plaintiffs' Exhibit 4,
 3 lease between Cyril J. Grillot and Horace J.
 4 Boesch and Valley Asphalt Corporation, was
 5 marked for purposes of identification.)

6 MR. ROMINE: For those of you on
 7 the telephone, I have asked the court reporter
 8 to mark as Exhibit 4 a document -- actually
 9 maybe a few documents, but we will hopefully
 10 get some testimony on that, and the Bates --
 11 it's Bates stamped 000005 through 25.

12 BY MR. ROMINE:

13 Q. And Mr. Crago, I want to ask you
 14 first of all just about a part of this exhibit.

15 A. Okay.

16 Q. And the numbers -- the Bates
 17 numbers down at the bottom that I'm going to
 18 ask you about are 05 through 08.

19 A. Okay.

20 Q. And I'm going to ask you if you've
 21 seen that document before, just 05 through 08?

22 A. Yes, I have seen this document
 23 before.

24 Q. And what is it?

25 A. My understanding of this document

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1 is it's a lease agreement between the
 2 landowner, which looks like it's Cyril Grillot,
 3 and Valley Asphalt Corporation.

4 Q. Okay. And if you look at the very
 5 first page, it references Cyril Grillot and
 6 Horace Boesch. Do you see that?

7 A. Yes, sir.

8 Q. Is it your understanding that
 9 Mr. Grillot and Mr. Boesch owned the property
 10 at that time?

11 A. That is my understanding.

12 Q. Okay. And Valley Asphalt leased
 13 the property then in 1971, at least according
 14 to this document?

15 A. Yeah. I believe this is like a
 16 continuation of the lease.

17 Q. Okay.

18 A. That's the earliest document that
 19 I could locate.

20 Q. So between 1956 and 1971, Valley
 21 Asphalt leased that same property that's
 22 referred to here in the 1971 lease; is that
 23 correct?

24 A. I believe that to be correct.

25 Q. You just haven't seen any

Wlio:HCAG:cc:RJ:CC:PC:4527

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1 documents -- the lease that existed before
 2 this?

3 A. That's correct. I'm not aware if
 4 it was in writing or if it was a gentlemen's
 5 agreement.

6 Q. That was my next question.

7 A. Okay.

8 Q. Do you know if it was in writing?

9 A. I don't know.

10 Q. Okay.

11 A. I know I could not locate any
 12 documents when I did a thorough review.

13 Q. Okay. And then if you look at
 14 pages nine through 13 --

15 A. Yes, sir.

16 Q. -- can you tell me what that is?

17 A. It looks like a continuation of
 18 the lease that started in 1977. And again it
 19 is the same principals, with Grillot and Boesch
 20 as being the landowners, of which Valley
 21 Asphalt is continuing our lease of the
 22 property.

23 Q. Okay. And if you could look at
 24 page 14 and tell me what that is.

25 A. In reading the letter, it's panned

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1 by Mel Levy, which was -- he had the title of
 2 the Dayton manager, but he also had the
 3 environmental management duties at that point.
 4 It looks like he is requesting an extension of
 5 the lease agreement from February 24th, 1977,
 6 and the lease would end in January 31, 1980.

7 Q. And do you see down at the bottom
 8 of page 14 there's a cc to a B. Lykins,
 9 LYKINS?

10 A. Yes, sir.

11 Q. Who is B. Lykins?

12 A. I believe that to be Bill Lykins.

13 Q. Who is that?

14 A. He was executive vice president of
 15 Valley Asphalt probably during this same time
 16 frame.

17 Q. Is Mr. Lykins still alive?

18 A. I believe he is alive, sir.

19 Q. Somewhere in Ohio?

20 A. I -- no, I think he retired and
 21 moved south.

22 Q. Okay. How about E. VanLeeuwen,

23 VANLEEUWEN?

24 A. That name I do not recognize.

25 Q. Okay. And if you look at page 15,

Wlio:HCAG:cc:RJ:CC:PC:4527

Wlio:HCAG:cc:RJ:CC:PC:4527

1 can you tell me what that is?

2 A. It looks like a property tax bill
3 for \$929. I'm not familiar with the document
4 other than just looking at it.

5 Q. Did Valley Asphalt pay the real
6 estate taxes for the Dryden Road property when
7 it was under lease?

8 A. I don't know.

9 Q. Okay. And then if you look at
10 pages 16 through 25, can you tell me what that
11 is?

12 A. It looks like a continuation of
13 the lease starting the 29th of February 1988.

14 Q. And if you could turn to page 25.

15 A. Okay.

16 Q. What is depicted on page 25?

17 A. What I can try to make out here,
18 it looks like a map of our property that was
19 being leased from Grillot and Boesch.

20 Q. Okay. If I could ask you to look
21 at page 25.

22 A. Okay.

23 Q. And for lack of a better word,
24 there seems to be a -- about a peanut size and
25 shape figure in approximately the middle of the

1 page. And if I'm reading it correctly, it says

2 water E L E V, period, 733.5. Do you see that?

3 A. I might have to have you point
4 that out.

5 MR. LEWIS: I don't see it.

6 THE WITNESS: I wear bifocals, and
7 I cannot see it. Maybe if you point it out, I
8 can try to zone in on it.

9 BY MR. ROMINE:

10 Q. I'll do my best.

11 A. Oh, okay. Let me -- he's looking
12 at that.

13 MR. LEWIS: I can't read that.

14 With bifocals I can't read it.

15 THE WITNESS: I see the shape that

16 you are referring, but I can't read the text.

17 BY MR. ROMINE:

18 Q. Okay. Was there water on the
19 property that Valley Asphalt leased from

20 Mr. Grillot and Mr. Boesch at that time?

21 A. I'm not aware. That predated my
22 involvement with the company.

23 Q. Was there in 1993?

24 A. I don't recall there being water
25 at that location.

1 Q. Was there ever something that you
2 referred to as a lagoon or settling pond on
3 Valley Asphalt property plant number six?

4 A. We have a small -- I'll call it a
5 water location there today, and we use that for
6 dust control.

7 Q. And is it in approximately the
8 location where that peanut shape is?

9 A. It's in close proximity to that,
10 yes.

11 Q. Okay. And what's it used for?

12 A. We use it for dust suppression on
13 our roadways today. Some of our roadways in
14 material handling areas are not paved, and we
15 are under permit contract with the Ohio EPA to
16 control dust on site. So our loader will use
17 its front bucket, pick up some of the water,
18 and distribute it over areas where dust may be
19 occurring either due to wind or to traffic.

20 Q. And is that pond -- is it a
21 natural formation, or was that dug out at some
22 point?

23 A. The drawing, I'm still not aware.
24 The location where we have it today is actually
25 dug out. I mean, it's a depression in the

1 ground that's pre-existing.

2 Q. Somebody dug it out at some point?

3 A. I don't know that it was dug out.
4 It may have been a depression in the ground
5 where water naturally occurred or naturally,
6 you know, flowed during rain events.

7 Q. Other than what we have seen here
8 in Exhibit 4, were there other communications
9 between Valley Asphalt and Mr. Grillot?

10 A. I'm not aware of any.

11 Q. How about between Valley Asphalt
12 and Mr. Boesch?

13 A. I'm not aware of any.

14 Q. Did Valley Asphalt have any
15 communications with a company called South
16 Dayton Dump and Landfill?

17 A. I'm not aware of any
18 communications.

19 Q. How about with a company called
20 Moraine Recycling?

21 A. I'm not aware of any
22 communications with Moraine Recycling.

23 Q. Did Valley Asphalt pay monthly
24 rent checks to Mr. Grillot and Mr. Boesch when
25 the property was under lease?

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1 A. I'm not aware of the payment
 2 agreement for the lease. The only documents
 3 that are present today are what I'm aware of.

4 Q. Have you ever seen any record of
 5 any payment made under these leases?

6 A. No. I've done a thorough search
 7 of all of our current and pre-existing
 8 documents, and I have not been able to locate
 9 any of those -- any addition to what has been
 10 presented to your office.

11 Q. Who did the negotiations on Valley
 12 Asphalt's behalf when Valley Asphalt bought the
 13 property?

14 A. On the purchase of the property?

15 Q. Right.

16 A. I'm not aware of the direct
 17 communications. I was not involved, and I
 18 believe it predicated my employment with the
 19 company, so I'm not aware who did that.

20 (Thereupon, Plaintiffs' Exhibit 5,
 21 drawing by Bowser-Morner titled Approximate
 22 Boundary of Valley Asphalt Site, was marked for
 23 purposes of identification.)

24 MR. ROMINE: What I'm marking as
 25 Exhibit 5 is a drawing done by Bowser-Morner,

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1 B O W S E R, M O R N E R, and the title of the
 2 drawing is Approximate Boundary of Valley
 3 Asphalt Site.

4 BY MR. ROMINE:

5 Q. Mr. Crago, have you seen Exhibit 5
 6 before?

7 A. Yes, sir. I brought it to today's
 8 meeting.

9 Q. And what is it?

10 A. It is a site map of the -- that
 11 includes the Dryden Road facility. I outlined
 12 what I believe to be -- in yellow what I
 13 believe to be the property line that we
 14 currently work within today.

15 Q. Okay. When you say we, you are
 16 referring to Valley Asphalt Corporation?

17 A. Yes, sir.

18 MR. ROMINE: Did someone just join
 19 the telephone conference?

20 MR. STINES: Yeah, this is Joe
 21 Stines from DP&L.

22 BY MR. ROMINE:

23 Q. And when was this drawing made?

24 A. The date on the bottom header
 25 shows February 2012.

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1 Q. Okay.

2 A. But that's referencing a demo, but
 3 I believe it's in the 2012 time frame.

4 Q. Okay. And so Bowser-Morner
 5 produced this document for Valley Asphalt?

6 A. Yes, sir, they did.

7 Q. And what was the purpose of that?

8 A. We hired Bowser-Morner to do our
 9 vapor remediation on site in agreement with the
 10 federal EPA. So as part of that site
 11 investigation and ongoing engineering design,
 12 they produced this map.

13 Q. Okay. And I notice you -- well,
 14 let me ask you this, I notice some numbers
 15 within the part that you highlighted in yellow.
 16 And the numbers are in boxes. And my question
 17 to you is what do those numbers refer to?

18 A. I've highlighted two different --
 19 three different things on the map. The one in
 20 yellow is the property boundary, as I
 21 understand it, and I have highlighted in pink
 22 actual building numbers. You can see number
 23 one, two, four, five, six, and number seven.

24 Q. Okay.

25 A. And then I also put a blue dot in

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1 the center, and that's the approximate location
 2 of our current asphalt plant.

3 Q. Okay. Is the plant a building?

4 A. No, sir.

5 Q. Okay.

6 A. It's an outside structure.

7 Q. How big is it?

8 A. The footprint might be 100 feet by
 9 100 feet.

10 Q. What is one, the number one? Does
 11 that refer to what you might call building one?

12 A. Yes. Number one is building one.

13 That is our previous office building that was
 14 required to be taken down because of
 15 contamination underneath.

16 Q. So does building one still exist?

17 A. The building has been removed.

18 The slab still exists underneath.

19 Q. And when you say because of
 20 contamination, what kind of contamination?

21 A. My understanding is there's waste
 22 from the previous landfill underneath that
 23 building that caused concerns with vapor
 24 migrating. So I'm not sure the exact
 25 contamination, but from the reports that I've

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1 seen, there's a whole slew of different
2 contaminants.
3 Q. So it's your understanding that
4 building one was demolished because of a vapor
5 intrusion issue?

6 A. Yes, sir.

7 Q. That's the same reason why
8 Bowser-Morner did this drawing in the first
9 place was because of the vapor intrusion issue?

10 A. Yes, sir.

11 Q. Okay. How about building number
12 two, what is that?

13 A. Building number two, we called it
14 a Quonset hut, and that was -- it was a very
15 old kind of semicircular warehouse building,
16 and it also had a small brick office on the
17 front of it. So it was mostly storage, but it
18 also had a small amount of office space in the
19 front.

20 Q. And is building two still
21 existing?

22 A. Building two has also been taken
23 down, except for the slab underneath was left
24 in place.

25 Q. Okay. How about building four,

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1 what is that?

2 A. Building number four is the
3 control building for the asphalt plant, and
4 that still remains.

5 Q. How about building five?

6 A. Building five is an asphalt lab,
7 and it was also an office for the site
8 superintendent.

9 Q. And is building five still being
10 used?

11 A. Building five has been removed.
12 The slab underneath the concrete slab
13 underneath still remains.

14 Q. How about building six?

15 A. Building six was a small block
16 storage building in very close proximity to the
17 asphalt plant.

18 Q. Is that still existing?

19 A. That building had to also be taken
20 down. The slab underneath was left in place.

21 Q. And how about building seven?

22 A. Building number seven is up at the
23 front of the property. That was a two-car
24 garage that was my understanding was owned by
25 the Boesch and Grillot families. The fence

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1 went through the center of the building. We
2 painted it. We maintain the building, but we
3 had no idea what was inside of the building.

4 During the vapor intrusion, we had
5 to open it up, and at that time we discovered
6 there was a lot of family items. I think there
7 was an old pickup truck and some boxes and
8 wedding pictures and stuff. So they removed
9 those items, and then that building was taken
10 down. The slab underneath was left in place.

11 Q. And at one time was there a
12 building three?

13 A. I believe there was a building
14 three, and I don't know the location. I
15 believe it was along the drive into the
16 facility. I think it was an old block building
17 that -- I think it fell down due to gravity.

18 Q. Were you -- did you ever see
19 building three?

20 A. I did.

21 Q. When did that fall down?

22 A. I would say 15 years ago
23 approximately.

24 Q. So buildings one, two, five, six,
25 and seven have been demolished due to the vapor

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1 intrusion work?

2 A. That is correct.

3 Q. And has there -- did Valley
4 Asphalt build any buildings to replace any or
5 all of those demolished structures?

6 A. We have not built buildings. We
7 have brought in trailers for some of our
8 storage that just sit on top of the ground. We
9 were not allowed to dig, build, put footers in.
10 Everything had to remain above grade.

11 Q. Okay. And how many trailers does
12 Valley Asphalt use now at the Dryden Road
13 facility?

14 A. By the plant, I would say we have
15 approximately six or seven box trailers. The
16 office building is toward the front of the
17 property. It had to be located off site. We
18 moved our operations basically.

19 Q. And where are the office buildings
20 now?

21 A. Enon, Ohio.

22 Q. Enon?

23 A. Yes, sir.

24 Q. How do you spell that?

25 A. E N O N.

1 Q. You had mentioned that building
2 five at one point had been an office and a lab?

3 A. Yes, sir.

4 Q. And so the office is now -- that
5 was in building five, that function is now
6 being carried out in Enon, Ohio?

7 A. No, the office that was within the
8 test lab area was for the superintendent. The
9 superintendent is still on site, but he kind of
10 works out of his truck. He doesn't have an
11 on-site office.

12 Q. Okay.

13 A. If he needs to sit down at a desk,
14 he will go in the control building, which is
15 building number four. There's a desk inside
16 there that he works at.

17 Q. How about the lab; is there a lab
18 on site?

19 A. We do have a trailer, again,
20 sitting on the ground that is our lab
21 operations if we needed it.

22 Q. And do you need it?

23 A. If we run state work that we have
24 to check quality control, we would have to use
25 that. I'd say in the last five or six years,

1 we have not used that.

2 Q. Okay. When you say state work,
3 does that mean a contract with the state of
4 Ohio?

5 A. Yes, sir, it could be the state of
6 Ohio.

7 Q. And they have some kind of quality
8 control requirements that goes along with their
9 contracts?

10 A. Yes, sir.

11 Q. And that may require you to use a
12 lab facility?

13 A. Yes, sir.

14 Q. Okay.

15 MR. LEWIS: Excuse me, Dave.

16 Could we take a quick bathroom break?

17 MR. ROMINE: Absolutely.

18 (Recess taken.)

19 BY MR. ROMINE:

20 Q. Why did Valley Asphalt want to buy
21 the property back in 1993?

22 A. I was never given a reason. I
23 would be speculating if I gave you an answer.

24 Q. Did any of the Jurgenses ever
25 tell you why they bought the property instead

1 of just continuing to lease it?

2 A. No, they did not.

3 MR. ROMINE: Number 6.

4 (Thereupon, Plaintiffs' Exhibit 6,
5 printout from Google Maps, was marked for
6 purposes of identification.)

7 BY MR. ROMINE:

8 Q. Mr. Crago, have you had a chance
9 to look at Exhibit 6?

10 A. Yes, sir, I have.

11 Q. And have you seen it before?

12 A. Yes. It is a Google Map that I
13 brought to the meeting today.

14 Q. And what does it show?

15 A. It shows an aerial view of our
16 Dryden Road facility kind of in closer than the
17 previous map that we were discussing.

18 Q. And you see there's a blue
19 highlight it looks like?

20 A. Yes, sir.

21 Q. And who did that?

22 A. I did that.

23 Q. And what does the blue highlight
24 depict?

25 A. I tried to show the approximate

1 boundary of our property there as I understand
2 it.

3 Q. When you say our property, do you
4 mean Valley Asphalt's?

5 A. Yes, sir. I'm sorry. I keep
6 saying that.

7 Q. That's okay. I just wanted to
8 make it clear.

9 It looks like the way I'm
10 interpreting your blue outline here, it looks like
11 the Valley Asphalt property has a little bit of
12 frontage on Dryden Road; is that correct?

13 A. That is correct.

14 Q. But the frontage on Dryden Road
15 looks like it's no wider than maybe an
16 industrial or commercial driveway?

17 A. That is correct.

18 Q. And the bulk of Valley Asphalt's
19 property looks like it's between some

20 businesses on Dryden Road and the Miami River?

21 A. That is correct.

22 Q. If you are standing at ground
23 level on the Valley Asphalt property, can you
24 see Dryden Road?

25 A. No, sir.

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1 Q. Can you see any traffic going by
 2 on Dryden Road?
 3 A. Not at ground level you cannot.
 4 Q. Can you see the river?
 5 A. No, sir.
 6 Q. Why? There's trees?
 7 A. There's trees and there's a berm.
 8 Q. A berm?
 9 A. Yes, sir.
 10 Q. How big is the berm?
 11 A. I'd say the berm is approximately
 12 25 feet high.
 13 Q. And who built the berm?
 14 A. I don't know.
 15 Q. Has the berm been there since you
 16 got there in 1993?
 17 A. Yes, sir.
 18 Q. Was it there before 1993?
 19 A. I don't know.
 20 Q. If you're at ground level at the
 21 Valley Asphalt property and you're facing the
 22 river, you say you can see the berm?
 23 A. Yes, sir.
 24 Q. Does the berm extend beyond the
 25 Valley Asphalt property line?

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1 A. I believe it does.
 2 Q. Has anyone ever told you what the
 3 berm is for?
 4 A. No.
 5 Q. If you look at Exhibit 6 -- and
 6 I'm just talking about the Valley Asphalt
 7 property now, nothing outside of Valley
 8 Asphalt.
 9 A. Okay.
 10 Q. If you look at Exhibit 6, within
 11 the Valley Asphalt property, are there any
 12 buildings that aren't trailers?
 13 A. Yes.
 14 Q. And where are those?
 15 A. The building -- our control
 16 building for the asphalt plant is still
 17 pre-existing, and that's what I'll call
 18 building number four from the previous map,
 19 which was Exhibit 5.
 20 Q. Okay. Could you put a number four
 21 on Exhibit 6?
 22 A. Yes, sir.
 23 Q. Just write that.
 24 A. Do you want me to circle it and
 25 put a number four?

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1 Q. Sure, whatever you think would
 2 designate it.
 3 A. (Complies with request.)
 4 That's the control building.
 5 Q. Could you just write a four on
 6 there?
 7 A. Let me get a flat surface here.
 8 (Complies with request.)
 9 Q. I'm just going to stand here for a
 10 minute, because I might have some more
 11 questions on that same topic.
 12 A. All right.
 13 Q. Are there any other buildings
 14 within the Valley Asphalt property shown on
 15 Exhibit 6 that aren't trailers?
 16 A. I do not believe there are any
 17 other buildings.
 18 Q. Okay. Can you circle for me where
 19 the plant is?
 20 A. (Complies with request.)
 21 Q. And could you just write in the
 22 word plant?
 23 A. Plant?
 24 Q. Yeah.
 25 A. (Complies with request.)

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1 Q. And just below where the plant is,
 2 it looks like there's some rectangles. Are
 3 those the trailers that you talked about
 4 earlier?
 5 A. Are you pointing to these?
 6 Q. Yes.
 7 A. No, sir.
 8 Q. What are those?
 9 A. Those are tanks.
 10 Q. Tanks? Okay. And could you
 11 circle those and write in tanks?
 12 A. Yes.
 13 (Complies with request.)
 14 Q. Are there -- is there a pile or
 15 are there piles of asphalt currently on the
 16 Valley Asphalt property?
 17 A. Yes.
 18 Q. And are those shown on this
 19 Exhibit 6?
 20 A. Yes, they are.
 21 Q. And can you circle those and put
 22 asphalt?
 23 A. Do you want me to -- yeah. Okay.
 24 I'm going to write in the lighter colored area
 25 so you can still read it maybe.

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1 Q. Sure.

2 A. (Complies with request).

3 MR. LEWIS: Excuse me. I just
4 want to make sure the record is clear. The
5 dark area that you circled is the asphalt?

6 THE WITNESS: Yeah.

7 MR. LEWIS: Okay. Not --

8 THE WITNESS: There is a little
9 bit here. Do you want me to do a second circle
10 up here maybe?

11 MR. ROMINE: Please.

12 THE WITNESS: Would that help?

13 I'm going to go over in this lighter area so I
14 can put asphalt, and you'll be able to read it.
15 And then a little area in between there.

16 BY MR. ROMINE:

17 Q. I was wondering if this pen might
18 work a little bit better.

19 A. It's the surface. You'll see my
20 pen works down here fine. But I'll try in both
21 colors, whichever you want. I have circled
22 three general areas and written asphalt three
23 times on the map.

24 Q. Okay. My next question is there
25 seems to be a darker area here and then a

1 lighter area here, and both those areas are
2 within your general area marked asphalt. My
3 question to you is what are these two different
4 things here? This is dark, this is light. Is
5 it all an asphalt pile?

6 A. Yes, sir. You can see on the
7 lower left there's a ramp that goes to the top
8 of the asphalt pile, and that's how the trucks
9 will go to the top of the asphalt pile and dump
10 their recycled product.

11 Q. I see.

12 A. And the lighting and the elevation
13 changes cause some differential in the color.

14 Q. Okay. Why does Valley Asphalt
15 have asphalt piles on the property?

16 A. To protect the environment.

17 Q. Can you explain?

18 A. Asphalt -- recycled asphalt
19 product is obviously recyclable. It's the most
20 recyclable product in the country. It
21 outweighs plastic, paper, and steel combined.
22 We do it not only for financial benefit of
23 conserving natural resources, both the liquid
24 asphalt and the aggregate stone that goes back
25 in, but it also helps the environment.

1 Q. So does the -- where does the
2 asphalt that's in the pile or piles come from?

3 A. Typically if you're doing a new
4 project, you may have a pre-existing asphalt
5 surface or base. So if that existing asphalt
6 in the field has deteriorated to where there's
7 no structural value to it, they will remove it.

8 Q. So the primary immediate source of
9 the asphalt in the asphalt piles is old asphalt
10 off site rather than asphalt from your plant;
11 is that correct?

12 A. That is correct.

13 Q. Is there any asphalt in the
14 asphalt pile that comes straight from the
15 plant?

16 A. There will be a very small amount
17 at the end of the day or possibly at the
18 beginning of the day. They will call it
19 clean-out. So at the end of the day, you may
20 have, you know, five or ten ton of hot mix
21 asphalt left in your silo or left in the plant.
22 That needs to be removed before it cools down
23 to ambient temperature.

24 So they will put that in the
25 loader bucket, then put that on the recycle

1 pile, and then that will be run back through
2 the plant.

3 Q. But it's your understanding that
4 the majority of the asphalt in the asphalt pile
5 comes from off site, at least the immediate
6 source?

7 A. Yes, that would be my
8 understanding of that product.

9 Q. Has the asphalt pile, or piles,
10 ever extended across Valley Asphalt's property
11 to someone else's property?

12 A. I'm not aware of our asphalt going
13 onto other properties.

14 Q. Did Valley Asphalt ever have
15 permission to put asphalt on someone else's
16 property?

17 A. I'm not aware of anything
18 permission-wise in writing for Valley to store
19 off site.

20 Q. Over time, let's say from 1956 to
21 today, has there been any general increase or
22 decrease in the size of the asphalt pile or
23 piles?

24 A. In my opinion, I believe the
25 asphalt pile has grown over the years. As you

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1 can see in today's picture, the -- there's a
2 fair volume of asphalt on site.

3 Q. Do you have any estimate as to the
4 volume of the asphalt on site?

5 A. I don't really have an answer for
6 that. I would be guessing. It would be hard
7 to guess.

8 Q. How tall is it?

9 A. I would say approximately 30 or
10 maybe 35 feet high from, you know, kind of
11 existing grade.

12 Q. You mentioned that it's your
13 understanding that the pile has gotten bigger
14 over time?

15 A. That would be my opinion, yes.

16 Q. And has that been a steady
17 increase, or has there been ups and downs?

18 A. There's ups and downs relative to
19 the market. If we are doing a lot of base work
20 and we can do a lot of recycling, we'll try to
21 utilize as much as possible. If we are doing a
22 lot of real small projects where we can't use
23 recycle or it's just not cost effective to use
24 recycle, we may not use as much. So it's
25 market driven.

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1 Q. Are you aware that some of the
2 adjacent property was used by Mr. Grillot and
3 Mr. Boesch as a dump?

4 A. That is my understanding. Yes, I
5 am aware of that.

6 Q. Did the closing of the dump affect
7 the size of the asphalt pile or piles?

8 A. I wasn't aware that the dump was
9 closed. My understanding in the conversations
10 and in the history of the facility is that's
11 the concern, the dump has not been closed,
12 but --

13 Q. So your answer is?

14 A. What was your direct question
15 again?

16 Q. Okay. Let me rephrase it then.
17 Have the operation or did the operation of the
18 dump affect the size of the asphalt pile or
19 piles?

20 A. It did not.

21 Q. Has the location of the asphalt
22 pile changed over time?

23 A. The general location of the
24 asphalt pile has always been in close proximity
25 to the asphalt plant. We have always tried to

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1 keep it just for efficiencies as close to the
2 plant as possible. So as we are using it, as
3 we need the product, it's -- the material
4 handling becomes easier the closer it is to the
5 plant.

6 Q. When did the asphalt pile start?

7 A. I only have recollection of when I
8 started with the company, which is in '93, and
9 the pile existed at that point.

10 Q. Do you have any information as to
11 whether the pile or piles existed before 1993?

12 A. I do not have any direct evidence.

13 Q. What is in the piles?

14 A. The pile consists of I'll call it
15 recycled asphalt pavement, or RAP for short,
16 R A P, and it consists of approximately 95
17 percent stone and five percent liquid asphalt.

18 Q. When you say five percent liquid
19 asphalt, is it currently liquid?

20 A. No, it's in a solid form. At
21 ambient temperature, it is solid, and it's
22 actually coating the stone that's in the mix.

23 Q. But at 400 degrees Fahrenheit,
24 it's liquid?

25 A. Yes, sir.

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1 Q. And what is liquid asphalt?

2 A. It's a derivative of the petroleum
3 industry. When you refine petroleum products
4 out of the ground, there's a whole string of
5 products that are derived from that. You go
6 from the light ends of, you know, kerosenes,
7 very light fuels, to the middle grade, you will
8 get into your diesel fuels, your automobile
9 fuels. Then on the very bottom you will get
10 into your heavier liquid asphalts, which I'm
11 referencing here. And then even heavier than
12 that you may get into some roofing grade
13 asphalts that are very stiff and very hard.

14 Q. Has the nature of the materials in
15 the piles changed over time?

16 A. No, it's been very consistent.

17 Q. What does RAP stand for again?

18 A. Recycled asphalt pavement.

19 Q. It seems like the asphalt in the
20 piles has to be put in the plant again before
21 it can be used; is that correct?

22 A. Yes, it's one of the raw
23 ingredients that goes in a hot mix asphalt
24 plant.

25 Q. So it's not really recycled yet,

1 or is it?

2 A. It's continuously recycled. We do
3 not store it on site. It's only kept for a
4 short time frame until we can reuse it.

5 (Thereupon, Plaintiffs' Exhibit 7,
6 Contract to Purchase Real Estate, was marked
7 for purposes of identification.)

8 BY MR. ROMINE:

9 Q. Have you seen Exhibit 7 before?

10 A. Yes, sir, I have.

11 Q. And what is it?

12 A. My understanding of this is a
13 contract for Valley Asphalt Corporation to
14 purchase the real estate at Dryden Road where
15 the asphalt plant resides.

16 Q. And -- okay.

17 A. And that's from -- the seller is
18 listed as Grillot and Boesch, and then it may
19 be descendants of the original owners.

20 Q. And did Valley Asphalt actually
21 purchase the property pursuant to this
22 agreement?

23 A. My understanding is we did
24 purchase the land in 1993.

25 MR. ROMINE: For those of you on

1 the telephone, this document is Bates stamped,
2 and the numbers are 000051 through 75.

3 BY MR. ROMINE:

4 Q. And if you could turn to page ten
5 of the document, which is number 60 at the
6 bottom.

7 A. All right. I have that.

8 Q. And you see there's a signature of
9 James P. Jurgensen?

10 A. Yes, sir.

11 Q. And is that James Jurgensen, Sr.,
12 that we had talked about earlier?

13 A. Yes, sir, it is.

14 Q. Do you recognize his signature?

15 A. It looks familiar, but I'm not a
16 handwriting expert.

17 Q. Okay. And then you see on page
18 61, it talks about lot consolidation, 9.761
19 acres?

20 A. Yes, sir, I see that.

21 Q. Okay. And is the Valley Asphalt
22 property on Dryden Road approximately 9.761
23 acres?

24 A. I believe that to be correct.

25 Q. Is there -- does Valley Asphalt

1 own any property in addition to the 9.761 acres
2 listed here in Exhibit 7 at plant six?

3 A. I'm not aware of additional
4 acreage owned other than this.

5 Q. Okay. And does Valley Asphalt
6 lease or rent acreage for plant six other than
7 this 9.761 acres?

8 A. I'm not aware of any additional
9 acreage leased.

10 Q. And does Valley Asphalt use any
11 land -- use or occupy any land other than this
12 9.761 acres?

13 A. I'm not aware of any additional
14 acreage used --

15 Q. Okay.

16 A. -- by Valley.

17 Q. So when we go back to Exhibits 5
18 and 6, if you look at the yellow highlighted
19 portion on Exhibit 5 and the blue highlighted
20 portion on Exhibit 6, that's meant to be the
21 9.761 acres described in Exhibit 7?

22 A. That is correct.

23 Q. Anything else?

24 A. No.

25 (Thereupon, Plaintiffs' Exhibit 8,

1 copy of 2010 aerial photograph, was marked for
2 purposes of identification.)

3 MR. ROMINE: Exhibit 8, for those of
4 you on the telephone, it's a document produced by
5 CRA, and the title is Figure 1, 2010 Aerial
6 Photograph, South Dayton Dump and Landfill Site,
7 Moraine, Ohio.

8 BY MR. ROMINE:

9 Q. I want to ask you, Mr. Crago, if
10 you've seen this document before?

11 A. It looks similar to our maps that
12 we've been talking about. I've pulled up
13 aerials before, so it looks similar to
14 information I've seen before, yes.

15 Q. Okay. Do you know if you've seen
16 this particular drawing before?

17 A. I don't recall specifically to
18 this drawing.

19 Q. Okay. Do you see on this document
20 there are some, I guess, yellow or orange lines
21 kind of drawn onto the aerial photograph?

22 A. Yes, I see some colored lines on
23 the photograph.

24 Q. And what I want to do is direct
25 your attention to, if you can read it, it's

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1 number 5054 sort of in the upper center of the
2 document.

3 A. I can't see that. I might have to
4 have you point that out. It's beyond my --

5 Q. I'll point it out to you. It's
6 under small print.

7 A. Okay.

8 MR. LEWIS: Where is it? I
9 can't -- okay. I don't see 5054.

10 THE WITNESS: I can see there's
11 numbers there.

12 MR. ROMINE: Fair enough.

13 THE WITNESS: I'll take for
14 granted that you're correct on the number.

15 MR. ROMINE: Okay.

16 MR. LEWIS: I can't see it.

17 BY MR. ROMINE:

18 Q. Do you recognize this aerial photo
19 as encompassing and includes what we have been
20 calling plant six of Valley Asphalt?

21 A. Yes, sir, it does look like it's
22 our property there.

23 Q. Okay. And the reason I ask about
24 these yellow lines is there's a yellow line
25 right here --

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1 property line, rather than does it go over the
2 yellow line. Go ahead, Dan.

3 THE WITNESS: The only thing I can
4 tell from the picture is as you indicated, the
5 line goes through the recycle pile.

6 BY MR. ROMINE:

7 Q. Have you heard the term parcel
8 5054 before?

9 A. No.

10 (Thereupon, Plaintiffs' Exhibit 9,
11 larger copy of 2010 aerial photograph, was
12 marked for purposes of identification.)

13 BY MR. ROMINE:

14 Q. What I'm showing you as Exhibit 9
15 is simply a larger, blown up version of Exhibit
16 8. So I'm going to ask you a similar question
17 now that you've had a chance to look at Exhibit
18 9, which I hope is a little bit easier to
19 decipher. And my question to you is did the
20 asphalt pile extend beyond Valley Asphalt's
21 property in 2010?

22 MR. LEWIS: Objection. It assumes
23 we know where the property line is other than
24 just a line drawn, but go ahead.

25 THE WITNESS: On the map you just

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1 Exhibit 9?

2 A. I cannot see any water on this,
 3 other than the river and the big ponds that are
 4 off our property.

5 Q. Right.

6 A. I don't see it in proximity to the
 7 asphalt plant.

8 Q. The title to Exhibit 9 indicates
 9 that this was taken in 2010. Did the pond --
 10 was the pond there in 2010?

11 A. The dust control?

12 Q. Yes.

13 A. Yes.

14 Q. And if you could just put an X --
 15 either an X or a circle, whatever you think is
 16 more appropriate, on Exhibit 9 where you think
 17 the pond was located.

18 A. Okay.

19 Q. And just maybe with a letter P,
 20 something like that.

21 A. (Complies with request.)

22 It's right here. I know it's
 23 right to this side of the plant. And when I
 24 say pond for dust control, I'm talking maybe
 25 ten foot by 15 foot in dimensions. So it's

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1 very small.

2 Q. Do you call it a pond?

3 A. No.

4 Q. What do you call it?

5 A. Dust control water.

6 Q. Do you ever use the word lagoon?

7 A. I don't.

8 Q. Have you ever heard the dust
 9 control water referred to as a lagoon?

10 A. No.

11 Q. How about a settling pond?

12 A. No.

13 Q. A little bit earlier this morning
 14 I think you had said that the asphalt plant
 15 is -- it's a structure, but it's not a
 16 building?

17 A. It's not an enclosed structure.

18 Q. It's not an enclosed structure?

19 A. It's an open structure.

20 Q. What does it consist of? What is
 21 the plant?

22 A. The asphalt plant at this site
 23 will consist of a rotary dryer. It's like a
 24 cylinder that's approximately eight and a half,
 25 nine foot in diameter, maybe 40 feet long. It

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1 has a flame in the middle that dries the stone.

2 At the end of the rotary dryer,
 3 you will have a hot elevator that goes up into
 4 the batch plant, and then you will have the
 5 batch plant itself that the dry material goes
 6 into. You will have cold feed bins. There's
 7 approximately four of them on this site that
 8 you feed different size aggregates into the end
 9 of the drum for drying.

10 Then you'll have a liquid asphalt
 11 tank that you'll pump liquid into the plant and
 12 then the aggregate is combined with the liquid
 13 asphalt in a pug mill in the plant, mixed up.
 14 Then it can either be dropped directly
 15 underneath into a truck or it can go up a slat
 16 conveyor into a silo for short-term storage and
 17 then truck loading.

18 On the end of the rotary dryer,
 19 you'll have a collection venting system that
 20 will go to a baghouse. And there's a large
 21 baghouse on site that's approximately ten foot
 22 by 40 feet long and 15 feet high, and all the
 23 air that comes out of the end of the drum goes
 24 through the baghouse to collect the dust.

25 Q. And was there a baghouse at the

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1 plant say in 1956?

2 A. I'm not familiar with the exact
 3 operation of the plant at that point. I know
 4 just 1993 to current.

5 Q. There was a baghouse in 1993?

6 A. Yes, sir.

7 Q. And how was that baghouse dust
 8 disposed of?

9 A. Baghouse dust, 100 percent goes
 10 back into the mix. On the bottom of the
 11 baghouse -- we pulse the whole baghouse. It
 12 has felt bags inside, and all the dust gets
 13 knocked down to the bottom of the baghouse,
 14 which is V-shaped. And then there's an auger
 15 in the bottom of the baghouse that feeds the
 16 dust back into the plant.

17 Q. So that becomes part of the
 18 asphalt?

19 A. Yes, sir.

20 Q. You mentioned that asphalt
 21 consists of some fraction of petroleum; is that
 22 correct?

23 A. Yes, sir.

24 Q. The pavement that you would put on
 25 a road, what percentage of that by weight would

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1 you say is petroleum product?

2 A. Five percent approximately.

3 Q. The rest is aggregate?

4 A. Yes, sir.

5 Q. Anything else?

6 A. You could add other small

7 components for specialty mixes.

8 Q. Does Valley Asphalt add special

9 components for specialty mixes?

10 A. Not typically, no.

11 Q. Have they in the past?

12 A. Yes.

13 Q. What kind of specialty -- or what

14 kind of components did Valley Asphalt use for

15 the specialty mixes?

16 A. We might use a modified liquid

17 asphalt, and we have the ability to have

18 polymers placed in the asphalt that make the

19 asphalt more user friendly for a wider variety

20 of pavement designs.

21 Q. Is modified liquid asphalt the

22 same thing as asphalt with polymers added, or

23 are those two different things?

24 A. Those are the same thing.

25 Q. They are the same thing?

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1 A. In my judgment.

2 Q. And what kind of -- what are the

3 polymers?

4 A. The polymer that we typically use

5 is called SBS. It's styrene-butadiene-styrene.

6 It's a solid pellet form that goes into the

7 liquid asphalt and gives it better physical

8 properties for higher and lower temperature

9 designs.

10 Q. And did plant six use SBS at some

11 point?

12 A. I believe, yes.

13 Q. Any other polymers that are used

14 in your specialty mixes?

15 A. We have the ability -- one other

16 additive that we have used over the years, and

17 I believe we have used it at Dryden Road, is a

18 material that's called Gilsonite.

19 MR. LEWIS: How do you spell that

20 for the record?

21 THE WITNESS: G I L S O N I T E.

22 It's a natural occurring -- it's only mined in

23 one place in the world. It's in western United

24 States. It's a powder -- pulverized powder

25 material that's added into the mix to stiffen

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1 it and to make it more -- again, a better

2 design for high temperatures. It's brought to

3 site in plastic bags and fed directly into the

4 plant.

5 BY MR. ROMINE:

6 Q. So Gilsonite is some kind of

7 mineral?

8 A. Yes, sir.

9 Q. Are these specialty mixes used for

10 a particular customer that wants these

11 properties in their asphalt?

12 A. Yes, sir.

13 Q. What customers?

14 A. Ohio Department of Transportation

15 is probably our biggest customer. And if they

16 are doing a heavy highway or a project that has

17 heavy traffic flow, they might require one of

18 these additives to be in the mix.

19 Q. Are you familiar with that

20 actually happening, where the Ohio Department

21 of Transportation says I want this polymer in

22 the mix?

23 A. A specific project?

24 Q. Yeah.

25 A. No. Over a 60-year window, I know

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1 we have done projects, and I could probably

2 produce a mix design that shows for that plant

3 we could have put -- we could have had a

4 polymer in the liquid asphalt coming to the

5 plant.

6 Q. Are there any other customers

7 other than the Ohio Department of

8 Transportation that requested specific polymers

9 or specific properties in their asphalt that

10 would have led you to add these polymers to

11 your asphalt?

12 A. I'm not aware of any specific

13 customers.

14 Q. Is there any waste SBS generated

15 as a result of you using SBS in asphalt?

16 A. No. SBS is a very small

17 percentage of the liquid asphalt. When SBS is

18 added to the liquid asphalt, it's approximately

19 three and a half percent of the asphalt cement.

20 And then the asphalt cement is only five

21 percent of the mix. And when SBS is put into

22 the liquid asphalt, it's completely encased in

23 the liquid. It can't be released in any form.

24 Q. How about Gilsonite, is there any

25 waste Gilsonite?

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1 A. There's no waste when we use
 2 Gilsonite. The Gilsonite comes in a little
 3 nine-pound bag. The bag is designed to melt in
 4 our process. So the bag will go into the pug
 5 mill, and because of the high temperature of
 6 the liquid and the aggregate, the bag melts
 7 releasing the Gilsonite into the mix, and then
 8 the pug mill blends all the product together.
 9 So there's no release to the environment.

10 Q. A little bit earlier this morning
 11 we had talked about the asphalt piles on the
 12 property.

13 A. Yes, sir.

14 Q. And I think you said that the
 15 asphalt piles consist mainly of asphalt that
 16 came from off site?

17 A. Yes, sir.

18 Q. Does it come from roads?

19 A. It could, yes.

20 Q. Does it come from anything other
 21 than roads?

22 A. It could come from a driveway. It
 23 could come from an airport runway. It could
 24 come from a bike path. We typically know, but
 25 I don't personally know every little project

1 asphalt pile, I think you said that there could
 2 be sometimes either at the end of the day or
 3 the beginning of the day when asphalt from the
 4 Valley Asphalt plant would actually go into the
 5 asphalt pile, correct?

6 A. Yes, sir.

7 Q. But most of the pile comes from
 8 asphalt off site?

9 A. That is correct.

10 Q. And that asphalt that comes back
 11 and becomes part of the pile could come from
 12 really any road anywhere? In other words, the
 13 road that it came from doesn't have to be a
 14 road that Valley Asphalt built?

15 A. That is correct.

16 Q. Do you have any sense of the
 17 proportion of what's in the pile now as to what
 18 portion came from off site and what portion
 19 came from the plant number six?

20 A. I would say a minimum of 99
 21 percent came from off site and less than one
 22 percent is plant clean-out.

23 Q. Okay. And you had mentioned that
 24 the baghouse dust gets reused and put back into
 25 asphalt?

1 that's come back.

2 Q. Right. So I guess it comes from
 3 some kind of pavement designed for vehicle use?
 4 A. Vehicle or pedestrian, airplane.
 5 It could come from a potable water source.
 6 Asphalt is used for liners on large reservoirs
 7 for drinking water because of its inert
 8 capabilities.

9 Q. Okay. Anything else?

10 A. Not -- none that come to mind.
 11 There's a lot of uses for asphalt.

12 Q. I guess my question goes to this,
 13 you have an asphalt pile that comes from
 14 asphalt off site.

15 A. Yes, sir.

16 Q. And you -- I guess my question is
 17 you wouldn't typically have what some people
 18 might call construction and demolition debris.
 19 It's not like you tear down a building and that
 20 goes in the asphalt pile. It's only for
 21 pavement?

22 A. That's correct. We only bring
 23 product in that we can use. Construction
 24 debris we cannot use.

25 Q. And again, going back to the

1 A. Yes, sir. There's a screw auger
 2 in the bottom of the baghouse that feeds all
 3 the fines back into the mix in the plant.

4 Q. Is there an actual bag in the
 5 baghouse?

6 A. There's approximately 800 bags in
 7 the baghouse. They are a very heavy duty Nomex
 8 high temperature filter. They are
 9 approximately eight inches in diameter, maybe
 10 12 feet long. And the air enters from -- the
 11 dirty air enters from one side, the clean air
 12 comes out the other side. The dust that
 13 collects on the bags, we pulse the baghouse to
 14 knock the dust down to the bottom of the
 15 baghouse, and then that's fed back into the
 16 plant.

17 Q. Do the bags wear out over time?

18 A. Yes, they do.

19 Q. And how are those disposed of?

20 A. Those are taken to a landfill.

21 Q. And who does that?

22 A. Our on site personnel will
 23 typically do that themselves, you know, off --
 24 end of the day, weekend. They will maybe
 25 replace the bags every five years, and those

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1 will go -- they will bring in a roll-off
 2 dumpster from a local landfill, and then they
 3 will place them inside the dumpster, cover it,
 4 and ship it back to them for disposal.

5 Q. So Valley Asphalt personnel will
 6 rent, lease, borrow a dumpster from a landfill?

7 A. Yes, sir.

8 Q. And bring it to plant six and put
 9 the bags in --

10 A. Yes.

11 Q. -- or the bag?

12 A. Yes, depending upon the volume of
 13 bags involved. We have a contract now with a
 14 dumpster on site for office, you know, paper,
 15 small, you know, waste from the office side.

16 Q. And who is that contract with?

17 A. I don't know. I believe it's
 18 Rumpke.

19 Q. Rumpke?

20 A. Yes, sir.

21 Q. And so getting back to the
 22 baghouse, though, if you had a bag that needed
 23 to be replaced today, would that go into
 24 Rumpke's dumpster today?

25 A. Yes. It's a non-hazardous waste.

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1 So depending upon the volume, if we had one bag
 2 break, and we were replacing one or two or
 3 three bags, it would go into our normal waste
 4 stream. If we were doing a complete baghouse
 5 swap out where you are doing 800, we would have
 6 to rent a larger roll-off.

7 Q. And did you ever witness that
 8 personally, having -- renting a roll-off that
 9 would come to plant six, Valley Asphalt
 10 personnel putting the bags in the roll-off or
 11 dumpster, and then taking that away?

12 A. Yes, sir, I have witnessed that.

13 Q. Did that happen for waste other
 14 than the bags?

15 A. A roll-off?

16 Q. Yeah.

17 A. Yes, sir.

18 Q. What kind of waste did -- went
 19 into the roll-off or the dumpster that you
 20 bought specifically for waste removal?

21 A. I witnessed roll-offs being used
 22 for removal of drums.

23 Q. For drums?

24 A. Yes, sir.

25 Q. When was that?

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1 A. In 2000.

2 Q. Anything other than the bags and
 3 the drums in 2000?

4 A. I'm not aware of any -- I don't
 5 recall any other waste being removed by
 6 roll-offs.

7 Q. Okay.

8 A. Well, let me add to that.

9 Q. Sure.

10 A. When we had to demo our buildings,
 11 because of the subslab vapor issues, we did
 12 have roll-offs come in at that point, and then
 13 the demoed buildings would go into those, and
 14 then we left the foundations.

15 Q. Where did the drums go in 2000?

16 A. My understanding is they went to a
 17 hazardous waste landfill.

18 Q. And how about the debris that was
 19 left over from the buildings that were demoed?

20 A. That also went into -- that one
 21 I'm familiar with, because I was directly
 22 involved. Those went to, I believe, Stony
 23 Hollow hazardous waste landfill.

24 Q. Where does the Rumpke dumpster get
 25 dumped?

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1 A. I don't know.

2 Q. You had mentioned some plant
 3 equipment, like a dryer and an elevator. Did I
 4 get that correct?

5 A. Yes, that is correct.

6 Q. And a silo. Is there a silo?

7 A. Yes, sir.

8 Q. Is that equipment the same
 9 equipment that was there in 1956?

10 A. No, sir, my understanding is it
 11 was replaced.

12 Q. And when was it replaced?

13 A. I have a record, and I believe I
 14 forwarded it to you, of a purchase of a used
 15 asphalt plant on December 8th of 1986. And
 16 that was purchased, I believe, in Pennsylvania,
 17 and that is the plant that's currently there
 18 now.

19 Q. So Valley Asphalt purchased a used
 20 asphalt plant in 1986?

21 A. Yes, sir.

22 Q. And that replaced what had been
 23 there previously?

24 A. Yes, sir.

25 Q. And what happened to the old

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1 equipment?

2 A. My understanding is the tanks
3 were -- continued to be used, because they were
4 still in good order, and they are today. The
5 plant, I don't -- usually those plants are sold
6 to be reused elsewhere, or they could be
7 recycled metal, and I don't know what happened
8 to that plant though.

9 Q. Okay. And talking about tanks,
10 tell me about what kind of tanks are on the
11 property now.

12 A. We have tanks for a couple
13 different products. The liquid asphalt that we
14 have been talking about previously, we
15 typically will have two tanks on site in case
16 we have two different grades of asphalt that
17 we're using, like modified, unmodified. And we
18 normally will have, you know, one or two fuel
19 tanks on site. We run number two diesel fuel,
20 and then we also run recycled oil as a fuel
21 source.

22 Q. And that fuels the plant?

23 A. Yes, sir, in addition to natural
24 gas. Today we are burning natural gas.

25 Q. And the natural gas, does that --

1 how is that brought to the plant?

2 A. It's brought in by pipe. That was
3 installed after 1993. That was installed
4 during my tenure here. When we installed that
5 pipe, we were not allowed to dig, so we had to
6 bring the pipe across land. And then when we
7 brought it across our driveway, we had to build
8 a concrete cover over the natural gas pipe. So
9 truck traffic in and out crosses that today.

10 Q. So the plant can use either the
11 fuel oil or the natural gas?

12 A. Yes, sir.

13 Q. And are the tanks all above
14 ground?

15 A. Yes, sir.

16 Q. Do you have any underground
17 storage tanks on the property?

18 A. We do not have any today, and my
19 understanding is we've never had underground
20 tanks.

21 Q. Okay. Have there been any leaks
22 from the tanks?

23 A. None have been released to the
24 environment.

25 Q. Have you reported any leaks to

1 Ohio EPA?

2 A. We had a barrel leak during a
3 waterline installation in 2000. That wasn't
4 our tanks. That was the buried barrels that
5 were other people's own --

6 Q. Right. Because I do want to get
7 to the barrels --

8 A. Okay. I didn't know --

9 Q. -- a little later. But let's just
10 talk about your, Valley Asphalt's, storage
11 tanks that you use either for asphalt or the
12 plant operation.

13 A. Fuel. Okay.

14 Q. Have you reported any leaks from
15 those tanks to Ohio EPA?

16 A. No.

17 Q. You had mentioned very earlier
18 this morning that Valley Asphalt has a front
19 end loader that loads -- is it loading the
20 aggregate into the plant?

21 A. The aggregate and the recycled
22 asphalt pavement.

23 Q. Okay. And does Valley Asphalt own
24 that front end loader?

25 A. I believe we do, yes.

1 Q. And is that -- how is that run,
2 diesel, gasoline? How is that -- what powers
3 the front end loader?

4 A. Those are typically run by diesel
5 fuel.

6 Q. Does Valley Asphalt own the front
7 end loader?

8 A. Yes, we do.

9 Q. Does it own only the one loader?

10 A. We own several front end loaders
11 in our corporation.

12 Q. How about plant six?

13 A. Plant six typically operates off
14 of a single loader.

15 Q. If you went there today, would
16 there be just the one front end loader?

17 A. I would assume so, but I don't --
18 I would be speculating.

19 Q. Typically just one?

20 A. Yes.

21 Q. Okay. How about any other kind
22 of, I guess, for lack of a better word, large
23 motorized equipment?

24 A. Not that we own. I mean, there's
25 products that are brought to us by truck. The

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1 liquid asphalt is brought in by truck that we
 2 don't own. The aggregates are brought to us by
 3 truck. But then again, we don't own those
 4 either. And then the recycled asphalt can be
 5 brought back to us by truck and again usually
 6 by private brokers.

7 Q. When the front end loader loads
 8 the aggregate or the recycled asphalt into the
 9 plant, how much of that is fresh aggregate, if
 10 you will, and how much is recycled asphalt?

11 A. I'd say 100 percent is fresh
 12 aggregate.

13 Q. And --

14 A. Or you said recycle also?

15 Q. Yeah.

16 A. You are probably averaging 80
 17 percent fresh aggregate, 20 percent recycle.

18 Q. Okay. Why don't you just take all
 19 the recycled asphalt in the pile and put that
 20 into the plant and not worry about the fresh
 21 aggregate?

22 A. Now you sound like my boss. The
 23 reason we have limits on recycle, there's
 24 several reasons, one is the plant technology.
 25 The plant is older. We are limited on how much

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1 recycle we can physically run through the plant
 2 because of screens inside. There are newer
 3 plants that can run a higher percent, but that
 4 plant cannot.

5 The other reason that we don't run
 6 higher percent recycle is for our ability to
 7 control quality. Because we want our end
 8 product to be very high quality, we want to be
 9 able to add aggregates to it and add new liquid
 10 asphalt to it to ensure a good final product.

11 Q. Does Valley Asphalt own any
 12 vehicles that are used at plant six?

13 A. Yes.

14 Q. And what are those vehicles?

15 A. The project superintendent would
 16 drive probably an F-150 pickup truck that he
 17 would drive to the site. In my position, I
 18 drive usually a Ford Taurus that I drive to the
 19 site. I might have a technician that would be
 20 working at the site that would also drive maybe
 21 a pickup truck that's owned by the company to
 22 the site. I'm not aware of any -- really any
 23 other vehicles per se.

24 Q. Were any of those vehicles used
 25 for waste disposal?

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1 A. None of them were used for waste
 2 disposal.

3 Q. How about the front end loader,
 4 was that ever used for waste disposal?

5 A. The front end loader may be used
 6 if they were changing out the bags in the
 7 baghouse, because the baghouse is very high up.
 8 When I have witnessed it before at this site,
 9 they will put the front end loader next to the
 10 baghouse with the bucket up in the air. The
 11 employees will pull them out and put the bags
 12 into the front end loader. Then the front end
 13 loader will empty that into the -- either the
 14 roll-off or the dumpster on site for disposal
 15 to handle it properly.

16 Q. Other than the bags, was the front
 17 end loader used for waste disposal?

18 A. I'm not aware of any instances
 19 where it's used for waste disposal.

20 Q. We talked a little bit about the
 21 bags and the baghouse dust. What -- other than
 22 that, what waste is generated at plant six?

23 A. We have air emissions that come
 24 out of the plant operations through a stack
 25 that's monitored by the federal EPA and the

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1 Ohio EPA. Other than that, we really don't
 2 have, you know, a byproduct or a waste product
 3 associated with running the plant.

4 Q. Has that been the case since 1956?

5 A. Yes. My understanding is the
 6 operation of an asphalt plant, it's
 7 all-encompassing. Everything that we produce
 8 goes into the product.

9 Q. And that's been the same, though,
 10 since 1956?

11 A. I've only been here since '93, so
 12 I'm only speaking from my tenure with the
 13 company.

14 Q. Do you have any information that
 15 the waste has changed over time, the waste from
 16 plant six has changed over time?

17 MR. LEWIS: Objection, it assumes
 18 there's waste, and the testimony was there was
 19 no waste. Go ahead.

20 THE WITNESS: I'll answer.
 21 Predating baghouses, before they had the
 22 technology to use filter media to trap dust,
 23 they used to use water mist to trap dust, and
 24 then the water would be captured, and we would
 25 then extract the dust out of that and put that

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1 back into our product.

2 BY MR. ROMINE:

3 Q. That was before you bought the new
4 plant in 1987?

5 A. I don't know. I started in '93.

6 Q. Okay. I see. Well, was that --
7 you had mentioned that there had been a
8 technology of asphalt production before the use
9 of bags and baghouses where asphalt production
10 used water to control the dust. Am I
11 understanding that correctly?

12 A. That is correct.

13 Q. And was that used at plant six?

14 A. I'm not directly aware, but I'm
15 assuming it was.

16 Q. At some point?

17 A. Yes, sir.

18 Q. And what happened to the water?

19 A. It evaporated.

20 Q. You had mentioned that Rumpke is
21 the company that Valley Asphalt uses to dispose
22 of its general trash, for lack of a better
23 word?

24 A. Yeah, we've always used a local
25 company, and I believe today it is Rumpke.

1 Q. Was there ever a different
2 company?

3 A. I'm not -- I don't know.

4 Q. Have you ever heard of a company
5 called Zeiler or Zeiler, Z E I L E R?

6 A. I have not.

7 MR. ROMINE: Do you want to go for
8 like five more minutes --

9 MR. LEWIS: Sure.

10 MR. ROMINE: -- then take some
11 kind of lunch break?

12 MR. LEWIS: Fine. Is that okay?

13 Actually, I should ask the witness. Is that
14 okay with you?

15 THE WITNESS: I feel fine. I
16 mean, I can go all day if you want.

17 MR. LEWIS: We'll come back after
18 lunch.

19 THE WITNESS: Okay. Sorry. Wrong
20 answer.

21 MR. LEWIS: But actually, Dave --
22 off the record.

23 (Thereupon, an off-the-record
24 discussion was held.)

25 BY MR. ROMINE:

1 Q. Do you have any information as to
2 where Valley Asphalt's, I want to say, general
3 waste was disposed of at any time?

4 A. The only waste I'm specifically
5 aware is when we hit barrels during a water
6 pipe install. I know those were disposed of in
7 a waste facility. When we had to take our
8 buildings down on site because of vapor
9 intrusion, those waste materials were taken to
10 Stony Hollow. Those are the only exact
11 locations that I'm aware of.

12 Q. I'm talking about the waste that
13 today would go into the Rumpke dumpster.

14 A. Okay.

15 Q. Where did that waste go?

16 A. I don't know.

17 Q. At any time?

18 A. I don't -- I'm not aware at any
19 time during my tenure.

20 MR. ROMINE: Okay. Is now a good
21 time?

22 MR. LEWIS: Yeah, fine.

23 MR. ROMINE: For those of you on
24 the telephone, we are going to take a 30-minute
25 lunch break, so plan on being back at 12:30.

1 (Lunch recess taken.)

2 BY MR. ROMINE:

3 Q. Before lunch, Mr. Crago, we were
4 talking about some of the storage tanks on the
5 Dayton property.

6 A. Yes, sir.

7 Q. And you had mentioned that there
8 were tanks for asphalt?

9 A. Yes.

10 Q. And for fuel oil?

11 A. Yes.

12 Q. And the fuel oil runs the plant?

13 A. Yes, sir. It fires the burner.

14 The plant is actually run off electricity, but
15 the main dryer on the plant is run by fuel or
16 natural gas.

17 Q. Oh, okay. Thanks. So the dryer
18 uses fuel oil?

19 A. Yes.

20 Q. But the plant also uses
21 electricity?

22 A. Yes, sir.

23 Q. Okay. Are there transformers on
24 site?

25 A. I'm not aware of any.

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1 Q. Do you know, does the plant just
 2 use regular 220 volt electricity? They plug
 3 into the grid?

4 A. I would say it's higher than that.
 5 I would guess 480 coming to the plant.

6 Q. Do you know how -- okay. They use
 7 the 480. Does it get stepped down at all?

8 A. It's stepped down from that.

9 Q. It is?

10 A. Yes.

11 Q. Where does that occur?

12 A. I'm not aware.

13 Q. Does it occur on site or off site?

14 A. I don't know.

15 Q. Okay. Does the front end loader
 16 run off the fuel oil? Do you know where it
 17 gets its fuel from?

18 A. It has the ability to use the
 19 number two fuel oil from the tank on site.

20 Q. Is that typically where it gets
 21 fuel from?

22 A. Sometimes, but it also has the
 23 ability to be fueled externally if we have, you
 24 know, a fuel truck local.

25 Q. And do you know what method is

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1 used more frequently?

2 A. I think they fuel on site -- from
 3 fuel tanks on site is the norm.

4 Q. Is any asphalt stored in drums?

5 A. No.

6 Q. Is any fuel oil stored in drums?

7 A. Not that I'm aware of.

8 Q. Are drums used for storage of any
 9 substance?

10 A. There are some drums on site that
 11 store oil for maintenance. There's some -- you
 12 know, some grease, some lubrication type, you
 13 know, plant maintenance, small amounts. Maybe,
 14 I don't know, three or four drums or something
 15 like that. Not a large quantity.

16 Q. How big are the drums?

17 A. 55-gallon.

18 Q. And how are they disposed of?

19 A. When they are empty?

20 Q. Yeah.

21 A. Those are typically sent off site
 22 for disposal.

23 Q. Do you know where they go?

24 A. I do not.

25 Q. Do you know how they were disposed

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1 of when you got to Valley Asphalt in 1993?

2 A. I wasn't directly involved in any
 3 drum disposal. My understanding is that, you
 4 know, if a drum was empty, they would probably
 5 send it down to our corporate office where it
 6 could either be recycled or disposed of. We
 7 have a large roll-off dumpster there that is
 8 recycled metal.

9 So our normal operation, we have a
 10 dumpster at our main office that heavy metal
 11 items can go in, and then they are sent to a
 12 metal recycling facility, of which I have seen
 13 drums go into that.

14 Q. Have -- were there any drums from
 15 plant six that were disposed of on site?

16 A. I'm not aware of any drums that
 17 were disposed on site. And as an environmental
 18 manager, when I started in '93, I would not
 19 have allowed that.

20 Q. How does a drum get from plant six
 21 to the metal recycling place in Cincinnati that
 22 you were talking about?

23 A. It would be put in the back of a
 24 pickup truck I think would be the normal mode
 25 of operation.

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1 Q. Have you seen that happen?

2 A. Yes, sir.

3 Q. Does Valley Asphalt do any testing
 4 of asphalt at plant six?

5 A. Yes, we do.

6 Q. And describe that.

7 A. We will test the raw products
 8 going into the plant, we will test the
 9 aggregates for gradation, and we will also test
 10 the recycle asphalt for asphalt content as it
 11 is fed into the plant. We will take a
 12 representative small sample. Then we make the
 13 hot mix asphalt, it's loaded into a truck, and
 14 depending upon the type of mix or the project,
 15 we will take a sample, a small 20-pound sample,
 16 and break that down and test it for quality.

17 Q. You mentioned a lab earlier. Is
 18 the testing done in the lab?

19 A. Yes.

20 Q. Is there an ASTM process or
 21 reference that Valley Asphalt uses to test
 22 asphalt?

23 A. Yes. Almost all of our testing is
 24 tied to ASTM or AASHTO, which is A A S H T O,
 25 which stands for American Association of State

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1 Highway Transportation Officials.

2 Q. So AASHTO has asphalt testing
3 procedures?

4 A. Yes, sir.

5 Q. Okay. Do you know which AASHTO
6 procedure Valley Asphalt uses?

7 A. We do several on site. The
8 gradation that we run follows a specific AASHTO
9 method. The extraction that we run, AASHTO
10 method, the burn-off, they all have their own
11 specific AASHTO methods.

12 Q. Do you know the names or numbers
13 of them offhand?

14 A. I don't have them memorized. I
15 can provide them for you if need be.

16 Q. How about ASTM, does Valley
17 Asphalt use ASTM procedures that are different
18 from the AASHTO procedures?

19 A. Both AASHTO and ASTM have very
20 similar type methods for testing, so a specific
21 ASTM method will match an AASHTO method. So
22 you might have one test, and they both have
23 their individual numbers.

24 Q. Okay. And do you know any of the
25 ASTM numbers?

1 A. I don't have them memorized. I
2 would have to look them up.

3 Q. Okay. I think you had mentioned
4 earlier that there had been a lab in what was
5 called building five?

6 A. Yes, sir.

7 Q. And now it's in a trailer; is that
8 correct?

9 A. Yes, sir.

10 Q. Has there been a lab at Valley
11 Asphalt ever since you worked there in one
12 place or another?

13 A. Yes, there has.

14 Q. Okay. How about before 1993?

15 A. I'm not specifically aware of
16 having a lab. I know the building that the lab
17 was in when I started in '93 was not new, so
18 I'm assuming that it was a lab prior to my
19 starting.

20 Q. Okay. Why do you -- why does
21 Valley Asphalt test the asphalt? What's the
22 purpose of testing it?

23 A. To prove the quality of the final
24 mix. And we do it for our own accord, because
25 being in business, we want to make sure our

1 customers are getting a good product. But then
2 there are specific customers that mandate us to
3 test it, which might be the Ohio Department of
4 Transportation, the FAA, you know, private
5 companies.

6 Q. Do you ever test the raw material
7 asphalt, the petroleum fraction that comes in?

8 A. No, we don't have the ability to
9 test that on site by itself.

10 Q. Does the testing procedure use any
11 solvents?

12 A. The testing of the hot mix asphalt
13 does. There are certain tests that require
14 solvents.

15 Q. And what solvents are used?

16 A. Historically we have used two
17 different solvents. One is called
18 trichloroethylene, which is a chemical compound
19 that breaks down asphalt, and it's used in a
20 centrifuge where we will take a sample of hot
21 mix asphalt, put it in the centrifuge, put the
22 solvent in with it, cover it with a filter, and
23 then it spins out, removing the liquid asphalt
24 and the solvent.

25 The second method uses a solvent,

1 but it's a derivative of oranges, it's called
2 d-limonene. To spell it, it's -- I think it's
3 D I M E L Y L E N E. And it's -- again, it's a
4 citrus-based product. We put it in the same
5 centrifuge. It extracts the asphalt. It's
6 just a newer style.

7 Q. Have you ever heard of the
8 abbreviation TCE?

9 A. Yes.

10 Q. And is that an abbreviation for
11 the trichloroethylene that you were just
12 talking about?

13 A. Yes, it is.

14 Q. And does Valley Asphalt still use
15 TCE to test asphalt?

16 A. Yes, we do. Not on this site, but
17 in our main office.

18 Q. Okay. Was -- did Valley Asphalt
19 ever use TCE at plant six in Dayton?

20 A. I'm not specifically aware of us
21 using it, but I assume that we did use it at
22 some point.

23 Q. Why do you assume that?

24 A. It was a standard practice.

25 Q. Up until what time?

1 A. When I started in '93, we were
 2 actively using the orange-based d-limonene
 3 products. So we typically did not run them in
 4 the field at that time. So since 1993 to
 5 current, I would say we have not run
 6 trichloroethylene at the site. Prior to that,
 7 I don't know for sure that we did, but I'm
 8 speculating that we did.

9 Q. Okay. Based on your knowledge of
 10 the asphalt industry --

11 A. Yes, sir.

12 Q. -- has there been any written
 13 policy in place at Valley Asphalt that says
 14 something like don't use TCE at plant six?

15 A. Written policy, no.

16 Q. How about standard operating
 17 procedure whether written or not?

18 A. The standard operating procedure
 19 is not to use it, and that's under my
 20 directive.

21 Q. Do you know if that was a change?
 22 In other words, when you became the
 23 environmental person for Valley Asphalt, did
 24 you go into plant six and say all right, stop
 25 TCE, now we are going to use the orange-based

1 Q. Or in the past?
 2 A. -- at any locations.
 3 Q. Okay. Does TCE have any advantage
 4 over the orange-based solvent?

5 A. No big advantage. There's --
 6 it tends to be a stronger chemical, which
 7 there's some advantages to that. But then the
 8 handling -- the extra safety you have to handle
 9 with that is a disadvantage. So in my opinion,
 10 it's better to use the orange-based product.

11 MR. ROMINE: For those of you on
 12 the telephone, we are getting a beeping noise
 13 here. I don't know if that's someone on the
 14 phone.

15 (Thereupon, an off-the-record
 16 discussion was held.)

17 BY MR. ROMINE:

18 Q. Before the interruption,
 19 Mr. Crago, we were talking about the testing of
 20 asphalt.

21 A. Yes, sir.

22 Q. And I think you had said that
 23 based on your knowledge of the asphalt
 24 industry, it was likely that plant six at some
 25 point tested its asphalt with TCE; is that

1 solvent?

2 A. No, it was already -- the change
 3 had already been made.

4 Q. Did anyone at plant six ever tell
 5 you that plant six had used TCE?

6 A. I have never been directly told
 7 that.

8 Q. Have you ever been directly told
 9 that plant six did not ever use TCE?

10 A. I have not been directly told that
 11 either.

12 Q. Did plant six ever use any solvent
 13 other than the orange-based solvent since you
 14 were there?

15 A. I'm not aware of any other
 16 products that would have been used as solvents,
 17 so no, we have not used any others.

18 Q. And I think you mentioned that the
 19 two solvents that were typically used were TCE
 20 and the orange-based solvent?

21 A. That is correct.

22 Q. Are there any others that Valley
 23 Asphalt used to test asphalt?

24 A. No, we don't use any others
 25 currently or prior --

1 accurate?

2 A. I believe that's correct and
 3 accurate.

4 Q. And that would have taken place in
 5 building five?

6 A. Yes, it would have been in
 7 building five.

8 Q. Okay. And what happened to the
 9 asphalt that had been tested?

10 A. The normal mode of testing, you'll
 11 put the hot mix asphalt in the centrifuge, you
 12 put the solvent in with it, it breaks it down,
 13 you spin it out. There's a nozzle on the side
 14 of the centrifuge that we have to collect in a
 15 graduated cylinder, because we have to keep
 16 track of the milliliters of solvent that comes
 17 out, because there's a correction factor in the
 18 test.

19 So our normal mode of operation,
 20 it goes into the graduated cylinder, they take
 21 the measurement off the cylinder, and then that
 22 product, as it is used and spent, gets poured
 23 into a five-gallon plastic receptacle.

24 Q. And you have seen that happen with
 25 the orange-based solvent?

1 A. Yes.
 2 Q. What happens to the solvent after
 3 it's put in the five-gallon receptacle?
 4 A. Those are all non-useable in the
 5 field, so we will bring that back to our main
 6 office. Sometimes it's disposed of. But under
 7 current policy, we are actually able to recycle
 8 it through a distillation process.
 9 Q. And before you had the ability to
 10 recycle it, how was it disposed of, focused now
 11 on the orange-based solvent?
 12 A. It would be -- you know, we bring
 13 it back in five-gallon jugs sealed, multiple
 14 ones at a time. They would go into a 55-gallon
 15 drum, and then we would contact a local -- or a
 16 waste disposal company to come pick them up.
 17 Q. When we go back in time, and if we
 18 talk about a time when TCE was used to test the
 19 purity of asphalt, was the testing procedure
 20 similar? In other words, was there the
 21 centrifuge that you were talking about? Was
 22 that also used when TCE was used?
 23 A. Yeah, the process is identical
 24 with the centrifuge, capture the solvent,
 25 measure how much volume comes out, and then

1 it's put into a receptacle, five-gallon
 2 sealable jug for disposal.
 3 Q. And have you seen -- was there any
 4 written standard operating procedures regarding
 5 the testing of asphalt by Valley Asphalt during
 6 the time when TCE was used?
 7 A. The written procedure we would
 8 have been following is ASTM, AASHTO. Valley
 9 Asphalt didn't have a written procedure for the
 10 steps following that.
 11 Q. When you say the steps following
 12 that, you mean after the asphalt had been
 13 tested?
 14 A. Yeah, for the disposal.
 15 Q. So there was no -- Valley Asphalt
 16 had no written procedure for the disposal of
 17 the solvent?
 18 A. That is correct.
 19 Q. Do you have any information as to
 20 how the solvent was disposed of when TCE was
 21 the solvent?
 22 A. Just as documentation, I believe,
 23 we have some old historical records from other
 24 locations where we would have bought trichlor
 25 from whatever location back to our corporate

1 office and then arranged to have it disposed
 2 of.
 3 Q. So you are saying you have
 4 documentation that shows -- for the arrangement
 5 of transportation of used TCE from locations
 6 other than plant six back to Cincinnati?
 7 A. Yes. It would also be our main
 8 lab, because there's actually a second test we
 9 only do at our main lab that requires us to use
 10 TCE even today.
 11 Q. Do you have similar documentation
 12 showing the transportation of used TCE from
 13 plant six back to Cincinnati?
 14 A. I do not have written
 15 documentation of that.
 16 Q. A few minutes ago we were talking
 17 about drums, and I think you testified that
 18 plant six has lubricating oil in drums?
 19 A. Yes, sir.
 20 Q. Anything else in drums?
 21 A. I'm not aware of any other drum
 22 bulk material that would be on site.
 23 Q. Are you aware of any leaks or
 24 spills from those drums?
 25 A. No, sir. Those are typically kept

1 inside the concrete containment where we have
 2 the big fuel tanks. The normal mode of
 3 operation is to keep the smaller drums in that
 4 same footprint.
 5 Q. I see. Okay. So you have -- so
 6 there's a location on the site where the tanks
 7 are grouped, for lack of a better word?
 8 A. Yeah. I've drawn it on your
 9 previous maps that you provided to me, and I
 10 labeled it as tanks.
 11 Q. Okay. And that's also where the
 12 55-gallon drums are kept?
 13 A. Yes.
 14 Q. Okay.
 15 (Thereupon, Plaintiffs' Exhibit
 16 10, Environmental Remediation Report at Valley
 17 Asphalt prepared by David M. Scardino, was
 18 marked for purposes of identification.)
 19 MR. ROMINE: For those of you on
 20 the telephone, Exhibit 10 is a document, there
 21 are no Bates stamps, but the title is
 22 Environmental Remediation Report at Valley
 23 Asphalt. There's a letterhead, which is TCA
 24 Environmental, Inc., and there's a stamp on it
 25 that says received Ohio EPA September --

1 actually, just SEP, but September 05, 2000.

2 BY MR. ROMINE:

3 Q. And Mr. Crago, have you seen this
4 document before?

5 A. I have seen this report before.

6 Q. And what is it?

7 A. This is an environmental
8 remediation report that was done by TCA
9 Environmental with regard to barrels that were
10 dug up during a water pipe installation on our
11 property at Dryden Road.

12 Q. And did you -- were you involved
13 in the commissioning of this report?

14 A. I was involved with the -- this
15 report, yes.

16 Q. When you say barrels, were those
17 drums?

18 A. 55-gallon drums.

19 Q. And how were those discovered?

20 A. We had a construction crew
21 actually using a backhoe excavator opening a
22 trench line from out along the main road back
23 into the back side of our office building on
24 site, and as you can see on the last page of
25 this, it gives like a schematic.

1 Directly where it says office, the
2 51 by 31 foot office, that kind of dark spot in
3 the middle of the paper is where we hit barrels
4 while we were excavating for this waterline
5 with our excavator.

6 Q. So you were planning on putting in
7 a waterline; is that correct?

8 A. Yes, sir.

9 Q. Is this potable water or sanitary
10 sewer or something different?

11 A. This would be -- I believe it was
12 a potable water source.

13 Q. Okay. And what happened when the
14 backhoe hit the barrels?

15 (Thereupon, an off-the-record
16 discussion was held.)

17 BY MR. ROMINE:

18 Q. Mr. Crago, we were talking about
19 Exhibit 10, the environmental remediation
20 report. I think I had asked you what happened
21 when the backhoe uncovered or found drums?

22 A. I think just the manner that they
23 were excavating the trench, I think some of the
24 barrels were knocked over, I think some of the
25 barrels were punctured, and then some of the

1 barrels remained upright.

2 Q. So these were barrels that were
3 underground?

4 A. They were underground.

5 Q. And was Valley Asphalt aware of
6 the existence of these barrels before the
7 construction of the waterline?

8 A. We were not aware of any
9 underground barrels.

10 Q. Okay. And then where did the
11 drums come from?

12 A. We don't know.

13 Q. Did Valley Asphalt do any
14 investigation as to where they came from?

15 A. Before the trench?

16 Q. At any time.

17 A. Yeah, I know there's been
18 depositions given that gave a very specific
19 reference to where these barrels came from.

20 Q. And what's your understanding just
21 based on those depositions as to where they
22 came from?

23 A. My understanding is there was a
24 barrel remanufacturer company that resided in
25 our -- in the old Quonset hut that we currently

1 use for warehousing. Our predecessor would
2 recondition barrels in there. So he would
3 bring old barrels in, he would clean them out,
4 take the residue, put it in another barrel,
5 clean up one of the barrels, sell it. Once the
6 residue was full in a new barrel, they would
7 bury it on site in the same location that we
8 hit our barrels.

9 Q. What was the name of that company?

10 A. I don't recall the company name.
11 I would have to look it up under the
12 deposition.

13 Q. Was it -- did this happen before
14 1956?

15 A. No, my understanding is it may
16 have been occurring after 1956 when we were
17 renting the property for the asphalt plant. I
18 believe this barrel remanufacturer was in the
19 Quonset hut building doing this process.

20 Q. When you say you have seen
21 deposition testimony on this topic, is that in
22 this case or some other case?

23 A. It's in this case.

24 Q. I'm going to suggest to you that
25 we have heard some testimony about a company

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1 called Ottoson Solvents.

2 A. That is the name that I cannot
3 recall.

4 Q. That is the name?

5 A. Yes.

6 Q. So now that I've said that word,
7 that jogs your memory, and it's your
8 understanding from reading other depositions in
9 this case that Ottoson Solvents is the name of
10 the company that occupied the Quonset hut?

11 A. That is correct.

12 Q. Okay. Do you have any
13 understanding --

14 MR. EDDY: Can you spell that,
15 David?

16 MR. ROMINE: Sure. O T T O S E N,
17 I think.

18 MR. LEWIS: I thought it was
19 S O N.

20 MR. ROMINE: Could be S O N.

21 MR. LEWIS: I'm not sure.

22 BY MR. ROMINE:

23 Q. Do you have any understanding
24 either from depositions in this case or from
25 your work at Valley Asphalt as to when Ottoson

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1 Solvents used the Quonset hut?

2 A. I have never seen any specific
3 dates.

4 Q. Was Ottoson Solvents still using
5 the Quonset hut in 1993?

6 A. They were not.

7 Q. Do you know if Ottoson Solvents
8 was still using the Quonset hut, say, in 1992
9 right before Valley Asphalt purchased the
10 property?

11 A. I'm not aware if they were still
12 on site at that point.

13 Q. Was the Quonset hut part of the
14 leased property?

15 A. No, it was not. My understanding,
16 it was not part of our leased property.

17 Q. So did Ottoson Solvents pay rent
18 to Valley Asphalt pursuant to a lease or
19 sublease?

20 A. No, they were not a sublease of
21 ours, and we did not receive rent from them.

22 Q. As far as Valley Asphalt knows,
23 they were another tenant of the owners,
24 Mr. Grillot and Mr. Boesch?

25 A. That is correct.

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Box Cray, T.P.

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1 Q. Do you know if Ottoson Solvents
2 owned the Quonset hut at one time?

3 A. I don't know.

4 Q. Okay. What was in the drums that
5 Valley Asphalt uncovered?

6 A. From the technical report --
7 there's been a lot of testing done. There's very
8 high levels of PCBs. There's very high
9 levels of toluene. There's high levels of TCE.
10 And then there's other chemicals at medium to
11 high levels also that I'd have to go back
12 through the report to try to remember them.

13 Q. And what was done with the drums?

14 A. We had the EPA, the fire
15 department, the local police department all
16 involved in the proper securing and disposal of
17 these drums. So the drums were pulled out of
18 the trench, they were placed on an impermeable
19 plastic membrane that was at grade level, in
20 addition to some free soil that was around them
21 that may have also been contaminated by the
22 liquids inside.

23 Then we made arrangements for --
24 or TCA Environmental made arrangements for
25 roll-off dumpsters to be brought in. The

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1 dumpsters were sealed up with plastic
2 impermeable liners. The drums, the contaminated
3 soils, any product that came out of the hole
4 was put into those dumpsters for disposal.

5 MR. ANDREASEN: Can we go off the
6 record for just a minute?

7 (Thereupon, an off-the-record
8 discussion was held.)

9 BY MR. ROMINE:

10 Q. If I could ask you to turn to page
11 two of Exhibit 10.

12 A. Okay, I'm on page two.

13 Q. You see where it says I guess
14 bullet point two, topography?

15 A. I see that.

16 Q. The topography is fairly level and
17 surface drainage tends toward the south. Do
18 you see that?

19 A. Yes, sir.

20 Q. Is that accurate?

21 A. I didn't write the report, so I
22 don't know.

23 Q. But aside from the -- do you have
24 any knowledge that -- let's break it down. Is
25 the topography on Valley Asphalt's property

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1 there fairly level?
 2 A. Yes, I would agree with that.
 3 Q. And does the surface drainage tend
 4 toward the south?
 5 A. I would agree with that generally,
 6 yes.
 7 Q. Did you see the drums when they
 8 came up out of the ground?
 9 A. Yes, sir, I did.
 10 Q. And were there any markings on
 11 them?
 12 A. I did not get in real close
 13 proximity, because I didn't have correct PPE.
 14 I didn't have coverings, face mask, anything
 15 like that. I wasn't aware of the chemicals
 16 involved, so I did not want to put myself in
 17 harm's way. But I was probably 25, 30 feet
 18 away. I could see that there were markings on
 19 some of the barrels, but I couldn't tell what
 20 it said.
 21 Q. Do you know how it came to be
 22 known that the drums came from Ottoson
 23 Solvents?
 24 A. The deposition that I was privy to
 25 and read, I believe that individual that was

1 speaking in the deposition said he personally
 2 was aware that they would take the drums out
 3 back, bury them in the proximity of where we
 4 hit them when we were digging.
 5 Q. When you say they, meaning the
 6 witness in the deposition you are talking about
 7 testified that Ottoson Solvents used drums and
 8 buried them in the place where you now know is
 9 where they were discovered in about the year
 10 2000?
 11 A. Yes, that is correct.
 12 (Thereupon, Plaintiffs' Exhibit
 13 11, two-page document, document entitled Sewer
 14 Line, Valley Asphalt Corporation, Dryden Road
 15 Plant, and email from NASAH@marasconewton.com
 16 to jurensj@jrjnet.com sent October 18, 2001,
 17 was marked for purposes of identification.)
 18 MR. ROMINE: For those of you on
 19 the telephone, Exhibit 11 is a two-page
 20 document, the first page has a title to it, it
 21 says Sewer Line, Valley Asphalt Corporation,
 22 Dryden Road Plant. And page two is an email --
 23 a printout of an email. On the top it is
 24 printed from, it looks like, the email of Jim
 25 Jurgensen, II.

1 BY MR. ROMINE:
 2 Q. My question to you is have you
 3 seen the first page of Exhibit 11 before?
 4 A. I have.
 5 Q. And what is it?
 6 A. It looks like a summary of what I
 7 will call the barrel incident in 2000 when we
 8 struck the barrels underground.
 9 Q. And so it happened -- it looks
 10 like it happened sometime in the middle of May
 11 of year 2000?
 12 A. That is correct.
 13 Q. And who is Roy Turton?
 14 A. Roy Turton was the manager of one
 15 of our --- our construction division in Dayton
 16 for Jurgensen Company.
 17 Q. Okay. What is Jurgensen Company?
 18 A. It's one of our sister companies
 19 that handles construction activities.
 20 Q. Was he a Valley Asphalt employee?
 21 A. No.
 22 Q. Does the sister company still
 23 occupy space at Valley Asphalt in Dayton?
 24 A. Not -- they do a little bit of
 25 storage maybe of some construction equipment,

1 but very little. They used to have office
 2 space, but with us required to take the
 3 buildings down, they had to move off site.
 4 Q. Who prepared this first page of
 5 Exhibit 11?
 6 A. I don't know.
 7 Q. Who is Kiefer, or Kiefer,
 8 K I E F E R?
 9 A. I don't recognize that name.
 10 Q. If you look towards the bottom of
 11 Exhibit 11, there's a recitation of some
 12 amounts paid to TCA Environmental and Waste
 13 Management. Do you see that?
 14 A. Yes, sir.
 15 Q. Did Valley Asphalt pay these
 16 amounts?
 17 A. My understanding is Valley Asphalt
 18 paid those amounts.
 19 Q. Did you have any role in cutting
 20 the checks?
 21 A. I did not.
 22 Q. Going back to the storage tanks
 23 that you told me about earlier.
 24 A. Yes, sir.
 25 Q. Have any of those tanks been

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1 removed or disposed of?

2 A. I'm not aware of any of our tanks
3 being removed from site.4 Q. Are you familiar with the term
5 phase one?

6 A. Yes, sir.

7 Q. Was there a phase one
8 investigation done for the Valley Asphalt land
9 at about the time that Valley Asphalt bought
10 the land in 1993?11 A. I have not seen a report or I have
12 not heard anybody tell me there was a report.13 Q. So to the best of your knowledge,
14 probably not?

15 A. That is correct.

16 Q. Okay. How about going back to
17 1956, I don't think that there was such a
18 term -- I don't think there was such a term in
19 1956, but was there any environmental
20 investigation done in 1956 when Valley Asphalt
21 first started using that piece of property?22 A. I'm not aware of any reports back
23 in 1956.24 Q. But other than reports, are you
25 aware of any investigation?

1 A. No.

2 Q. Have you heard the term Cinn Dump,
3 C I N N?4 A. I've read it somewhere. Within
5 the documentation somewhere, I remember reading
6 that.7 Q. Is it your understanding that the
8 land where Valley Asphalt has its Dayton plant,
9 plant six, is on a portion of what used to be
10 called the Cinn Dump?11 A. I haven't heard it referenced as
12 Cinn Dump. My readings and recollections are
13 it was called the South Dayton Dump.

14 Q. Okay.

15 A. And I don't know if that's the
16 same terminology.17 Q. Okay. Earlier this morning we had
18 talked about some employment records, and I
19 think you said that if we wanted to know who
20 may have worked at the Dayton plant, we would
21 have to go back to employment records --
22 historical employment records; is that
23 accurate?24 A. They may be available, but I don't
25 know that they would designate who was

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1 physically at that plant site versus who just
2 worked for us corporately.3 Q. Right. And where are those
4 records?5 A. I believe they would be at our
6 corporate office in Cincinnati at Mosteller
7 Road in Cincinnati.8 Q. Other than employment records, are
9 there any other records dealing with plant six
10 historical, let's say before 1993?

11 A. I'm not aware of any.

12 Q. Does Valley Asphalt have a
13 document retention policy now?14 A. I'm not aware of a specific
15 policy. I know I try to -- personally I try to
16 save any and all documents with anything that
17 would be relevant to long-term storage.18 Q. Documents relevant to long-term
19 storage?20 A. Yes. I mean, you know, long-term
21 potential issues.22 Q. I see. Okay. Are you aware of
23 any -- are you aware of any documents now in
24 Cincinnati dealing with plant six going back to
25 before 1993?

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1 A. I did a very thorough search of
2 any and all of my records. I did a very
3 thorough search of anybody even remotely
4 potentially involved verbally, and physically
5 went through any and everything we had. A lot
6 of the documents that we've provided to you
7 already I already had. Some of them came from
8 other sources within the company, or they may
9 have just been in our, you know, archived vault
10 in the basement.11 Q. So you are saying that you have
12 gone through Valley Asphalt's documents, and
13 where a document referred to plant six, such as
14 the leases with Mr. Boesch and Grillot --

15 A. Yes.

16 Q. -- you produced those?

17 A. I produced everything that we
18 could find that pertained to it in any manner.

19 Q. And you gave them to Mr. Lewis?

20 A. That is correct.

21 Q. And to your knowledge, those
22 documents have been produced as part of this
23 lawsuit in this litigation?

24 A. Yes, that was our intent.

25 Q. Do you know if Valley Asphalt has

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1 things like check registers going back before
 2 '93, let's say?
 3 A. I'm not aware of any.
 4 Q. Okay. I think you said that as
 5 far as you know, Valley Asphalt doesn't have a
 6 document retention policy?
 7 A. I don't know what the formal
 8 policy is. I know from a legal point of view
 9 that there's certain time frames that documents
 10 have to be kept. I don't know what those are.
 11 Q. Okay. So is it your understanding
 12 that documents that were kept in the ordinary
 13 course of business, files, correspondence,
 14 check registers, from 1993 and before that
 15 relating to the Dayton plant may have been
 16 destroyed at some point?
 17 A. They could very well have been
 18 destroyed.
 19 Q. Did anyone ever tell you that they
 20 were destroyed?
 21 A. No, sir.
 22 Q. Did anyone ever tell you that oh,
 23 no, we don't destroy any of that, that's stored
 24 in place X, wherever place X might be?
 25 A. No, I've never been told it's

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1 does Valley Asphalt have this in its file
 2 somewhere?
 3 A. I have a copy of this, because
 4 I've read through this before.
 5 Q. Okay.
 6 A. So these are some of the
 7 historical files that I -- when I went back
 8 through and brought everything into one source
 9 and started digging through it, I did see this
 10 document.
 11 Q. Okay. Fair enough. And if I
 12 could ask you to turn to the third page where
 13 the numbers at the bottom end in 44.
 14 A. Okay.
 15 Q. And if you could look at the, I
 16 guess, middle paragraph, it says Valley Asphalt
 17 has been in operation since 1956. My first
 18 question to you is does that refer only to the
 19 Dayton plant? In other words, did Valley
 20 Asphalt have operations, say, in Cincinnati or
 21 some other location before 1956?
 22 A. I don't know. I believe we were
 23 in operation before 1956. My understanding of
 24 that line would be that's referencing the
 25 Dryden Road facility.

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1 stored elsewhere or in place X.
 2 (Thereupon, Plaintiffs' Exhibit
 3 12, copy of a folder labeled Valley Asphalt
 4 Corporation and correspondence, was marked for
 5 purposes of identification.)
 6 BY MR. ROMINE:
 7 Q. Mr. Crago, have you seen Exhibit
 8 12 before?
 9 A. Yes, sir, I have.
 10 Q. And what is it?
 11 A. It looks like different
 12 correspondence with the Ohio EPA, some of them
 13 are to Dear Concerned Party at our address at
 14 Dryden Road, and then others look like --
 15 almost like a phone diary or maybe handwritten
 16 correspondence. It looks like they were with
 17 regard to the Ohio EPA and Mel Levy.
 18 MR. ROMINE: For those of you on
 19 the telephone, Exhibit 12 is a document -- it
 20 looks like -- the first page looks like it's a
 21 copy of a manila folder titled Valley Asphalt
 22 Corp., and there is a Bates number on it which
 23 is SDD-3_00025242 through 256.
 24 BY MR. ROMINE:
 25 Q. My question to you is, Mr. Crago,

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1 Q. The next sentence, five materials
 2 are used to produce asphalt. Then it says
 3 sand, gravel, asphalt cement, number four fuel
 4 oil, and water.
 5 A. Okay.
 6 Q. Is that accurate?
 7 A. No.
 8 Q. Can you explain how it's --
 9 A. I agree with the sand, gravel,
 10 asphalt cement, and the fuel oil, but the water
 11 we wouldn't add to our process, because we are
 12 drying the material. So that would be
 13 counterproductive.
 14 Q. Okay. Number three, asphalt
 15 cement, is that the petroleum fraction, or is
 16 that something different?
 17 A. No, that is the petroleum product.
 18 It's like the glue.
 19 Q. Okay. And does the number four
 20 fuel oil, does that go into the asphalt, or is
 21 that used only for the dryer?
 22 A. That's only used for the dryer.
 23 Q. So number four fuel oil is not an
 24 actual ingredient of the asphalt?
 25 A. That is correct.

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1 Q. The next sentence said a settling
 2 pond is present on site, but there's no
 3 discharge to the Great Miami River. Do you see
 4 that?

5 A. Yes, sir, I do.

6 Q. And was that accurate as of 1985?
 7 A. I didn't work for the company in

8 1985, so I'm not sure.

9 Q. Is it your understanding from your
 10 knowledge of the operations as to whether
 11 that's accurate or not?

12 A. It could have been, but I'm not
 13 aware specifically to that pertaining to that
 14 site.

15 Q. Okay. Then it says the dust from
 16 the wet washers are settled in the pond. Do
 17 you see that?

18 A. The dust -- okay, I see that
 19 sentence.

20 Q. And is that sentence accurate?

21 A. That would be a normal process,
 22 yes, if you had a wet wash scrubber.

23 Q. Okay. And that -- and if I
 24 understand your testimony from earlier this
 25 morning correctly, that would be created if you

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1 didn't have a baghouse?

2 A. That is correct.

3 Q. Okay.

4 A. Predating baghouses, there was wet
 5 wash scrubbers.

6 Q. So -- again, I'm trying to
 7 understand how the process worked. It says the
 8 dust from the wet washers are settled in the
 9 pond. I'm wondering, does that include water
 10 and dust that was put in the pond, or just the
 11 dust only?

12 A. It would be water and dust. Then
 13 the dust would evaporate -- the water would
 14 evaporate leaving only the dust product.

15 Q. And is this -- he is talking about
 16 a pond here. Is this the same pond that Valley
 17 Asphalt uses currently as a water source for
 18 controlling dust?

19 A. No, that would be a different --

20 Q. A different water source?

21 A. A different process, yeah.

22 Q. Okay. Do you know where this pond
 23 is that is referred to on page 44?

24 A. No. When I started in '93, we had
 25 a baghouse, so --

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1 Q. So it was already gone?
 2 A. It predated me.
 3 Q. Okay. Was there any body of water
 4 on the Valley Asphalt site since you started
 5 working there in 1993 other than the water that
 6 you now use for controlling dust?

7 A. There is not.

8 Q. Did you ever meet Mr. Levy?

9 A. Yes. I worked with Mel Levy
 10 numerous times.

11 Q. It's Levy?

12 A. Mel Levy, yes.

13 Q. I wanted to make sure I was
 14 pronouncing his name correctly.

15 A. Okay.

16 Q. When you were hired on in 1993,
 17 did he completely retire, or did he stay on for
 18 some time?

19 A. He stayed on. He was a licensed
 20 professional engineer, and he was very
 21 experienced on environmental concerns, so he
 22 was on the environmental front. He might have
 23 been called my mentor.

24 Q. And when did he pass away?

25 A. I don't know. I was -- if I

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1 speculated, maybe 12, 14 years ago.

2 Q. Was he still acting as your mentor
 3 when he passed away?

4 A. No, he retired.

5 Q. At some point he completely
 6 retired?

7 A. Yeah. I worked with Mel for
 8 maybe -- I started in '93. I probably worked
 9 with Mel for maybe four or five years.

10 Q. All right. Did you ever talk with
 11 Mr. Levy about the document or any portion of
 12 the document we are calling Exhibit 12?

13 A. No, I don't ever recall seeing
 14 this document or talking to Mel Levy about it
 15 prior to my digging it out of our historical
 16 files.

17 Q. Okay. And I take it when you dug
 18 this out of your historical files, that was
 19 after Mr. Levy's passing?

20 A. That is correct.

21 (Thereupon, Plaintiffs' Exhibit
 22 13, letter to John R. Jurgensen Company from
 23 the United States Environmental Protection
 24 Agency dated December 10, 2002, was marked for
 25 purposes of identification.)

1 MR. ROMINE: For those of you on
2 the telephone, Exhibit 13 is a document, and
3 there are Bates stamps, and it goes from 000938
4 through 000957.

5 MR. EDDY: Does it indicate whose
6 production it was, David?

7 MR. ROMINE: There's no prefix,
8 but my understanding is it was produced by
9 Valley Asphalt Corporation.

10 MR. LEWIS: Correct, it was
11 produced by us.

12 MR. EDDY: Okay. Thank you.

13 BY MR. ROMINE:

14 Q. Mr. Crago, have you had a chance
15 to look at Exhibit 13 before?

16 A. I have.

17 Q. And what is it?

18 A. This is a letter addressed to John
19 R. Jurgensen Company, and it is requesting
20 specific information with regard to the Dryden
21 Road facility.

22 Q. And what is the John R. Jurgensen
23 Company?

24 A. That's one of our sister companies
25 that I referenced earlier that Roy Turton

1 worked for. It's a construction division of
2 our corporation.

3 Q. And that division still exists?

4 A. Yes, sir.

5 Q. Were there any companies other
6 than John R. Jurgensen Company that you might
7 call a sister company that used the Dryden Road
8 facility?

9 A. Yes, at one point very early on
10 there was a very small office area on the front
11 of what we have been calling the Quonset hut.
12 And there was a small construction company in
13 there called Titus Construction, which is a
14 sister company of ours that no longer
15 functions, but has not -- it's still a viable
16 name.

17 Q. And was the John R. Jurgensen
18 Company owned by John R. Jurgensen?

19 A. It's owned by Jim Jurgensen now.

20 Q. Now it's owned by Jim Jurgensen?

21 A. Yes.

22 Q. The senior?

23 A. Yes. The original founder of the
24 company is John R. Jurgensen. That's Jim
25 Jurgensen, Sr.'s, dad.

1 Q. Got you. If you look at pages --
2 the last bit of the document, pages 954 through
3 957.

4 A. Yes, sir.

5 Q. It looks like you are listed there
6 as the environmental manager of John R.
7 Jurgensen Company.

8 A. Yes, sir.

9 Q. Did you ever get a paycheck from
10 John R. Jurgensen Company?

11 A. I did not.

12 Q. Solely Valley Asphalt?

13 A. Yes, sir.

14 Q. How about Mr. Turton?

15 A. I believe Mr. Turton only worked
16 for John R. Jurgensen Company.

17 Q. How about Mr. Bonner?

18 A. Jim Bonner is a surveyor for the
19 John R. Jurgensen Company.

20 Q. Is he still employed by the John
21 R. Jurgensen Company?

22 A. He is not. Mr. Turton is not and
23 Jim Bonner is not.

24 Q. Are they still alive?

25 A. I don't know.

1 Q. If you look at page 953, it looks
2 like Valley Asphalt is writing a letter to EPA
3 saying we are going to respond to your
4 information request; is that accurate?

5 A. Yes, sir.

6 Q. And you signed this letter?

7 A. I did.

8 Q. Was the information request from
9 EPA that you are referencing here on page 953,
10 was that similar to the information request to
11 the John R. Jurgensen Company on pages 938
12 through 952?

13 A. Yes, it is in reference to those
14 same questions.

15 (Thereupon, Plaintiffs' Exhibit
16 14, letter to US Environmental Protection
17 Agency from Daniel T. Crago dated December 11,
18 2002, was marked for purposes of
19 identification.)

20 MR. LEWIS: I think this is the
21 same thing, Dave, isn't it?

22 THE WITNESS: No, it's dated
23 different. One is December 11, and one is --

24 MR. LEWIS: Sorry.

25 THE WITNESS: -- January 7.

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1 MR. ROMINE: I might have given
2 you the wrong one.

3 MS. MEYER: I don't think so.

4 MR. LEWIS: Maybe I'm mistaken.

5 MS. MEYER: The header is
6 different.

7 MR. LEWIS: Okay. You're right.

8 Never mind.

9 BY MR. ROMINE:

10 Q. Have you seen Exhibit 14 before,
11 Mr. Crago?

12 A. Yes, sir.

13 MR. ROMINE: Okay. For those of
14 you on the phone, Exhibit 14 is a document
15 Bates stamped 000042 through 45, also, I
16 understand, produced by Valley Asphalt
17 Corporation.

18 BY MR. ROMINE:

19 Q. And what is Exhibit 14?

20 A. This is a response letter that I
21 wrote to the US EPA based out of Chicago,
22 Region Five, and they sent me a 30-day
23 information request, and this is my response to
24 that.

25 Q. Okay. And when you say they sent

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1 you the request, that's US EPA?

2 A. Yes, sir.

3 Q. And the questions that they asked
4 you, were those the same questions that they
5 asked of the John R. Jurgensen Company that we
6 saw on Exhibit 13?

7 A. I believe they are, because they
8 show one through 13, and this answers one
9 through 13, so --

10 Q. The reason I ask is -- sorry. Go
11 ahead.

12 A. Without going through one through
13, it looks like they match up, so --

14 Q. Fair enough. The reason I ask is
15 we see Exhibit 13, there's a request to John R.
16 Jurgensen Company. I didn't see a request
17 specifically addressed to Valley Asphalt. We
18 do have the responses, and so my -- I'm trying
19 to get at whether these answers are to the same
20 questions as that were on Exhibit 13.

21 A. I see.

22 Q. And your understanding is after a
23 brief glance, it appears that the answers to
24 appear on Exhibit 14 appear to be answers to
25 the same questions that we saw in Exhibit 13?

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1 A. Yes, just briefly starting down
2 the list, it looks like the answers.

3 Q. Okay. And if you look on page 44,
4 still on Exhibit 14, that's your signature
5 there?

6 A. Yes, sir, it is.

7 Q. And the answers here are true to
8 the best of your knowledge?

9 A. Yes, sir, they are.

10 Q. If you look on page 43, question
11 11 D, the John R. Jurgensen Company is a
12 subsidiary of Valley Asphalt Corporation?

13 A. That is correct.

14 Q. If you look at the first page of
15 Exhibit 14, page 42.

16 A. Okay.

17 Q. The very last question, it says
18 that Valley Asphalt has a permit to burn
19 off-spec oil.

20 A. Yes, sir.

21 Q. Is that -- when you burn off-spec
22 oil, is that off-spec asphalt or off-spec fuel
23 oil?

24 A. It's fuel oil.

25 Q. So I take it, and you correct me

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1 if I'm wrong, I take it that was burned
2 separate from any burning that might have gone
3 in to fuel the dryer?

4 A. That fuel oil would have been
5 burned in the dryer. Is that what you're
6 asking?

7 Q. Well, yeah.

8 A. Okay.

9 Q. It is. Would you burn off-spec
10 fuel oil to get rid of it, or are you putting
11 it in the plant to burn?

12 A. It's a fuel source. It's not --
13 we are not disposing of it. We are actually
14 deriving the BTUs out of it.

15 Q. That was my question.

16 A. And technically speaking, it's not
17 off-spec oil.

18 Q. Okay.

19 A. That's a mistype. It should be
20 on-spec oil, because it's tested and certified
21 and has to follow certain EPA guidelines.

22 Q. Okay. What's the meaning of the
23 word off-spec? Like why is -- why did you use
24 the word off-spec there?

25 A. We used to call it off-spec fuel

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1 because it doesn't meet the specifications of
 2 number two fuel oil, but it does meet the
 3 guidelines of the federal and the Ohio EPA
 4 for -- there's specifications that they
 5 require.

6 (Thereupon, Plaintiffs' Exhibit
 7 15, letter to Dan Crago from the United States
 8 Environmental Protection Agency, was marked for
 9 purposes of identification.)

10 BY MR. ROMINE:

11 Q. Mr. Crago, have you seen Exhibit
 12 15 before?

13 A. I have.

14 Q. And what is it?

15 A. It was a notice letter sent to me
 16 addressed to Valley Asphalt. This is from the
 17 US EPA, Region Five, out of Chicago,
 18 notifying -- making me aware of the potential
 19 for a Superfund alternative approach to
 20 resolution.

21 Q. Okay. And I'm going to read the
 22 re or subject line. It says general notice
 23 letter for the South Dayton Dump and Landfill
 24 site in Moraine, Ohio, and potential for
 25 Superfund alternative site approach. And what

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1 is the South Dayton Dump and Landfill site,

2 Moraine, Ohio?

3 A. My understanding, it was the
 4 property that our asphalt plant was located at
 5 on Dryden Road prior to our leasing the
 6 property. My understanding is it was called
 7 the South Dayton Dump.

8 MR. ROMINE: And for those of you
 9 on the telephone, it's pages 000961 through
 10 000976.

11 BY MR. ROMINE:

12 Q. If I could ask you to turn to the
 13 last page. It looks like there's some pen or
 14 pencil markings on the last page there. Do you
 15 see that?

16 A. Yes, sir, I do.

17 Q. Do you recognize that writing?

18 A. It looks like my handwriting. Not
 19 being a handwriting expert, but I can read it,
 20 so it -- I think it might be mine.

21 Q. Did you receive this on or about
 22 August 4th, 2005?

23 A. I believe I did, yes.

24 (Thereupon, Plaintiffs' Exhibit
 25 16, letter to Fred Bartman from Daniel Crago

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1 dated August 17, 2005, was marked for purposes
 2 of identification.)

3 MR. ROMINE: For those of you on
 4 the telephone, Exhibit 16 is a one-page
 5 document Bates stamped 000959.

6 BY MR. ROMINE:

7 Q. Have you seen Exhibit 16 before?

8 A. Yes, sir, I have.

9 Q. And what is it?

10 A. This is my response to Mr. Fred
 11 Bartman with the US EPA with regard to our
 12 involvement with the site at Dryden Road.

13 Q. Okay. So you are saying that
 14 Exhibit 16 is your response to Exhibit 15?

15 A. I believe that to be correct. My
 16 penning the letter to Fred Bartman, I'm not
 17 sure why -- his name must be written within
 18 this document. I don't want to go through page
 19 by page to find it, but I'm assuming that
 20 statement is correct.

21 Q. Okay. So you are assuming, then,
 22 looking at these documents -- well, let me ask
 23 it this way, did you send Exhibit 16 to EPA on
 24 or about August 17, 2005?

25 A. Yes, I did.

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1 Q. And the re, or subject line, of
 2 Exhibit 16 is the August 4, 2005,
 3 correspondence general notice letter for South
 4 Dayton Dump. Do you see that?

5 A. Yes, sir.

6 Q. That appears to refer to Exhibit
 7 15, which --

8 A. You're correct, the dates match.

9 Q. It says general notice letter for
 10 South Dayton Dump?

11 A. That is correct.

12 Q. Okay. So it looks like Exhibit 16
 13 is your response to the August 4th general
 14 notice letter, Exhibit 15?

15 A. That is correct.

16 Q. Okay. Did you send any other
 17 letters specifically regarding the general
 18 notice letter to EPA?

19 A. I'm not aware of any, and I don't
 20 know that I have copies of any.

21 Q. Fair enough.

22 (Thereupon, Plaintiffs' Exhibit
 23 17, letter to Valley Asphalt Corporation from
 24 the United States Environmental Protection
 25 Agency dated September 29, 2005, was marked for

1 purposes of identification.)
 2 MR. ROMINE: Exhibit 17 has Bates
 3 stamp 931 through 936.
 4 BY MR. ROMINE:
 5 Q. Mr. Crago, have you seen Exhibit
 6 17 before?
 7 A. Yes, sir, I have.
 8 Q. And what is it?
 9 A. It's a notice from the US EPA,
 10 Region Five, written to me, and they are
 11 basically spelling out their steps moving
 12 forward, I guess, for trying to get resolution
 13 of remediation of the Dryden Road facility.
 14 Q. Of the South Dayton Dump?
 15 A. Yes, sir.
 16 Q. If you could go back to Exhibit 9.
 17 MR. LEWIS: Which one is 9?
 18 MR. ROMINE: 9 is the --
 19 THE WITNESS: Bigger map.
 20 MR. ROMINE: -- bigger map that
 21 you showed --
 22 MR. LEWIS: This one right here?
 23 MR. ROMINE: Yeah.
 24 BY MR. ROMINE:
 25 Q. Do you have an understanding if

1 started in the -- kind of up close to our
 2 entrance to our property, that very narrow
 3 entrance that you referenced earlier.
 4 Q. Now, you are talking about on the
 5 left -- if you look -- if we are looking at
 6 Exhibit 9 on the left side of Dryden Road close
 7 to the bridge?
 8 A. That is correct.
 9 Q. Okay. Keep going.
 10 A. Then it pretty much followed a
 11 south, southwest progression all the way back
 12 through the lake that's shown in the bottom,
 13 and then possibly even into that forested area
 14 on the very lower left corner.
 15 Q. Okay. I want to specifically ask
 16 you about -- if you look at Exhibit 9, and we
 17 had talked about the Valley Asphalt portion of
 18 Exhibit 9, and then directly south of that you
 19 can see there's a green or wooded area?
 20 A. Yes, some trees and stuff. Yes, I
 21 see that.
 22 Q. Is it your understanding that at
 23 least some of the dumping part of South Dayton
 24 Dump was done there?
 25 A. I personally saw it happening,

1 the South Dayton Dump existed on any part of
 2 what's shown on Exhibit 9?
 3 A. As far as my personal
 4 understanding, I think everything within the
 5 colored boundaries is part of the dump either
 6 through solid waste or through under water --
 7 underground migration of liquids and solids and
 8 gas.
 9 Q. When you say the colored
 10 boundaries, what's that?
 11 A. I would include the river, I would
 12 include the parcel and properties northwest of
 13 the river as part of this investigation. I
 14 would include all the businesses. Pretty much
 15 everything shown within the borders of the map.
 16 Q. Okay. Basically everything?
 17 A. Yes, sir.
 18 Q. How about let's limit it and not
 19 talk about the site definition, but let's limit
 20 it to where waste may have been dumped.
 21 A. Okay.
 22 Q. Do you know where waste was dumped
 23 as part of the South Dayton Dump's business
 24 operations?
 25 A. Yeah, my understanding is it

1 occurring.
 2 Q. You personally saw it happening?
 3 A. Yes, sir.
 4 Q. What did you see?
 5 A. I saw -- there used to be an auto
 6 salvage yard there, and I saw oil fluids
 7 leaking out, being dumped out of vehicles
 8 outside of our fence line.
 9 Q. Is the main part of the auto
 10 salvage yard identifiable on Exhibit 9 here?
 11 A. I wouldn't be able to do that.
 12 Q. Okay. Could you get to the auto
 13 salvage yard from Dryden Road or from East
 14 River Road? How would you do that?
 15 A. There used to be an access road to
 16 the lake, so I'm assuming that would put you in
 17 close proximity to the -- that open area too.
 18 Q. Okay.
 19 A. I think you can kind of see in the
 20 middle -- right on the middle fold, you'll see
 21 kind of a horizontal corridor. I believe
 22 that's an access road going back to the lake
 23 and to that open field that you're referencing.
 24 Q. Okay. I see. Did you see any
 25 other disposal -- again, south of Valley

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1 Valley Asphalt enter into RI/FS settlement
 2 negotiations with EPA regarding the South
 3 Dayton Dump?
 4 A. I don't believe we did. I do not
 5 believe we entered any settlement with the EPA.
 6 Q. How about enter into environmental
 7 negotiations?

8 A. I don't remember any specific
 9 negotiations towards settlement.

10 (Thereupon, Plaintiffs' Exhibit
 11 18, letter to South Dayton Dump and Landfill
 12 Site in Moraine, Ohio, from the United States
 13 Environmental Protection Agency dated
 14 September 10, 2012, was marked for purposes of
 15 identification.)

16 BY MR. ROMINE:

17 Q. Mr. Crago, have you seen Exhibit
 18 before?

19 A. Yes, sir, I have.

20 Q. And what is Exhibit 18?

21 A. This is a letter written by the US
 22 EPA dated September 10, 2012. It's addressed
 23 to the South Dayton Dump Landfill site, general
 24 notice of potential liability. They give a
 25 spill ID number of B52B, and then it's a

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1 general memo outlining concerns and, you know,
 2 risks and liabilities and different legal code,
 3 And then starting on page five,
 4 there's a list of what's being called potential
 5 responsible parties that this letter was sent
 6 to. And it continues through page ten.
 7 Q. And Valley Asphalt is listed on
 8 page nine?

9 A. Yes, sir.

10 Q. And did Valley Asphalt receive
 11 this letter on or about September 10, 2012?

12 A. I believe we did, yes, sir.

13 Q. And if I could ask you to turn to
 14 page two of the letter.

15 A. Okay.

16 Q. And towards the bottom, it says
 17 EPA notifies you of your potential liability
 18 with regard to this matter and encourages you,
 19 as a potentially responsible party, to agree to
 20 reimburse EPA for costs incurred to date and to
 21 voluntarily perform or finance activities that
 22 EPA has determined or will determine are
 23 required at the site. Do you see that?

24 A. Yes, sir, I see that.

25 Q. And did Valley Asphalt agree to

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1 reimburse EPA for costs incurred up to
 2 September 10, 2012?
 3 A. No. And my recollection of the
 4 verbal conversations were that we were not a
 5 responsible party, and all of the documentation
 6 and data that we had that showed we were not a
 7 responsible party, and we asked if there was
 8 additional documentation and, as such, have
 9 never received anything.

10 Q. When you say verbal conversation,
 11 you talked to someone at EPA?

12 A. Yes, US EPA.

13 Q. And who did you talk to?

14 A. I don't have it noted, but that's
 15 been our general stance is if there's
 16 information available that we are not aware of,
 17 we would like to be privy to it or copied on
 18 it, and we have never been given any additional
 19 information.

20 Q. If you look at the bottom of page
 21 three, it mentions a Ms. Carol Ropski and
 22 Mr. Thomas Nash.

23 A. Yes, sir.

24 Q. I'm wondering if that refreshes
 25 your recollection as to somebody you might have

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1 spoken with?

2 A. I've directly spoken to both Carol
 3 and to Tom Nash over the years both directly
 4 face-to-face and by phone conversation, so --

5 Q. Okay.

6 A. It could very well have been to
 7 either or both.

8 Q. So my question is after you got
 9 this letter around September 10, 2012, your
 10 testimony is that you spoke possibly either
 11 with Thomas Nash or Ms. Ropski?

12 A. That could very well be, yes.

13 Q. Okay.

14 A. I don't have a written document of
 15 that though.

16 Q. But I'm asking do you remember --
 17 do you remember yes, I spoke with Mr. Nash in
 18 September 2012, or yes, I spoke with Ms. Ropski
 19 in 2012?

20 A. Yes. I remember speaking by
 21 phone, and then we actually lined up a direct
 22 meeting in Chicago with reference to this.

23 Q. Okay.

24 A. Marty Lewis was present at the
 25 meeting. That was --

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1 Q. Do you remember when that meeting .

2 was?

3 A. Yeah, I'll have a date here. That
4 date that Marty and I met with Tom Nash in
5 Chicago was April 9th, 2013.

6 Q. Okay. April 9th, 2013?

7 A. Yes, sir.

8 Q. Okay.

9 A. We met with Tom Nash and Steve
10 Renninger, who is with Region Five, but I
11 believe he is based out of Cincinnati.

12 Q. Okay. Where did that meeting take
13 place?

14 A. The downtown offices of the
15 federal EPA in Chicago.

16 Q. Oh, in Chicago?

17 A. I think verbally at that meeting I
18 actually asked for compensation for sealing and
19 capping the landfill with our paving and our
20 recycle pile half in jest, half serious,
21 because we have made a high percentage of our
22 surface area on site impervious.

23 Q. And what was their response?

24 A. They kind of smiled until, you
25 know, I told them I was serious, because, you

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1 know, one of the resolutions to capping this is
2 an asphalt impervious layer.

3 Q. Did they have any response other
4 than a smile?

5 A. No.

6 (Thereupon, Plaintiffs' Exhibit
7 19, letter to Carol Ropski from Daniel Crago
8 dated September 28, 2012, was marked for
9 purposes of identification.)

10 BY MR. ROMINE:

11 Q. Have you seen Exhibit 19 before?

12 A. Yes, sir.

13 Q. And what is it?

14 A. This is a response written by me
15 to Carol Ropski with the US EPA out of Chicago,
16 and it's referencing the letter and then the
17 meeting. It looks like it's referencing a
18 phone meeting on September 19th.

19 Q. Okay. So let's take it step by
20 step. It's regarding or re South Dayton Dump
21 and Landfill site, Moraine, Ohio. Do you see
22 that?

23 A. Yes, sir.

24 Q. And that's the dump we are talking
25 about basically on Exhibit 9?

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1 A. Yes. Yes, sir.

2 Q. Okay. And you write -- you began
3 I am writing on behalf of Valley Asphalt
4 Corporation in response to your letter of
5 September 10, 2012, regarding the above
6 referenced site. And that September 10, 2012,
7 letter is what we just looked at, Exhibit 18?

8 A. Yes, sir.

9 Q. And then it says we have reviewed
10 this letter and also attended by phone the
11 informational meeting on this matter on
12 September 19, 2012. Do you see that?

13 A. I'm sorry. Can you repeat that?
14 I was reading this one line.

15 Q. Sure. It's just the second
16 sentence of the letter, we have reviewed this
17 letter. And again, I guess you are talking
18 about the September 10 letter?

19 A. Yes, sir.

20 Q. And also attended by phone the
21 informational meeting on this matter on
22 September 19, 2012.

23 A. Yes.

24 Q. So I guess you spoke on the
25 telephone with EPA on September 19?

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1 A. Yes, sir.

2 Q. And do you remember that telephone
3 conversation?

4 A. Yeah, I believe it was an
5 informational conference call that they gave a
6 dial-in number, everybody dialed in, and then
7 they kind of gave a verbal rundown of their
8 letter and kind of where they were at --

9 Q. Okay.

10 A. -- with the process.

11 Q. All right. And then the second
12 paragraph, we have learned nothing to change
13 our longstanding position that Valley Asphalt
14 has no liability at the site. Do you see that?

15 A. Yes, sir.

16 Q. And then it says in fact, Valley
17 Asphalt is currently incurring expenses on its
18 property due to vapor intrusion from the South
19 Dayton Dump site. Do you see that?

20 A. Yes, sir.

21 Q. So -- and I think you had said a
22 few minutes ago that Valley Asphalt had to move
23 out of some buildings?

24 A. Yeah, we did a gradual move-out
25 over several years, I would assume.

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1 Q. Is that the expenses you are
2 referring to in Exhibit 19?

3 A. I believe that would be part of
4 the expenses. I don't know that that included
5 everything.

6 Q. Can you think of anything other
7 than that?

8 A. There's a legal liability any time
9 you're involved with instances similar to this.
10 A lot of the projects that we bid on, they will
11 do legal background checks, and if we are
12 involved in litigation, potential litigation,
13 it may prevent us from bidding on a project.
14 It may prevent us from negotiating to be
15 awarded a project.

16 So there's a lot of intangibles
17 that I can't say, you know, it cost us \$5, but
18 there could be a potential there of millions of
19 dollars.

20 Q. Are you aware that Valley Asphalt
21 lost business as a result of EPA thinking
22 Valley Asphalt is a PRP at the South Dayton
23 Dump site?

24 A. No, we had no business dealings
25 with the EPA. They would have been with

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1 private customers.

2 Q. No, but I mean are you aware that
3 Valley Asphalt Corporation lost business with
4 private customers as a result of EPA
5 identifying Valley Asphalt as a PRP with
6 respect to the South Dayton Dump?

7 A. I can't site specific projects,
8 no.

9 Q. And I think you had talked about
10 expenses incurred moving from buildings?

11 A. Yes, sir.

12 Q. And then possibly intangible
13 expenses like possibly losing business. Can
14 you think of any expenses other than those that
15 Valley Asphalt incurred as a result of the
16 South Dayton Dump site?

17 A. I know we had the direct expenses
18 that were shown earlier when we were digging
19 and we hit the barrels. We had direct expenses
20 there that were spelled out earlier. We had to
21 stop that project. So that part of that
22 project was not -- it was funded by, I believe,
23 the city, and I don't know that we completed
24 that. So there would be non-payment, because
25 the project was never finished. So those are

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1 some of the ones that I can recollect off the
2 top of my head.

3 Q. Can you recollect any more off the
4 top of your head?

5 A. Nonspecific.

6 Q. Okay. And I think you testified
7 in April of 2013, you went to a meeting with
8 EPA in Chicago?

9 A. Yes, sir, that is correct,
10 April 9th, 2013.

11 Q. And what came out of that meeting?

12 A. We met with -- Steve Renninger
13 gave a presentation on vapor mitigation, the
14 concerns. You know, pretty lengthy, about an
15 hour long presentation on vapors and vapor
16 mitigation, after which I believe Tom Nash
17 started talking about the importance of -- and
18 he almost kind of mandated the starting of a
19 vapor mitigation process.

20 We had to name an external
21 contractor to do the vapor testing, and we had
22 to -- I think within like a ten-day window, we
23 had to name an external project manager that's
24 going to handle all of the vapor mitigation on
25 site for Valley Asphalt.

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1 Q. Were there other PRPs at that
2 meeting?

3 A. No, sir.

4 Q. Just Valley Asphalt?

5 A. I believe that's correct.

6 (Thereupon, Plaintiffs' Exhibit
7 20, letter to Martin Lewis from Richard Karl
8 dated March 22, 2013, with attached unilateral
9 administrative order, was marked for purposes
10 of identification.)

11 BY MR. ROMINE:

12 Q. Have you seen Exhibit 20 before?

13 A. Yes, sir, I have.

14 Q. And what is it?

15 A. This is a letter written by the US
16 EPA, Region Five. It's addressed to Valley
17 Asphalt, Mr. Martin Lewis, at his office in
18 Cleveland, Ohio.

19 Q. And that's your counsel with you
20 today?

21 A. Yeah, that is our legal
22 representation counsel. And it's referencing
23 the South Dayton Dump and Landfill site, site
24 spill ID number, the B52B, and it's the
25 unilateral administrative order.

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1 Q. And did you get this on or about
 2 March 22, 2013?
 3 A. Yes, sir, we did.
 4 Q. And you had mentioned just a
 5 couple minutes ago about a meeting you had in
 6 Chicago with Mr. Nash and Ms. Ropski.
 7 A. Yes.
 8 MR. LEWIS: Mr. Renninger.

9 BY MR. ROMINE:

10 Q. Renninger?

11 A. Steve Renninger.

12 Q. I'm sorry. Thank you. And --
 13 well, you tell me. Was the meeting in Chicago
 14 designed to explain what you needed to do to
 15 comply with this Exhibit 20, the order?16 A. I believe that's -- yeah, that was
 17 correct.

18 Q. Okay.

19 A. We got this notice, and then
 20 immediately contacted US EPA, and they said
 21 that we were required to directly meet with
 22 them in a very timely manner.23 Q. Okay. And just could you describe
 24 briefly for me what Valley Asphalt has done to
 25 comply with this unilateral order that was

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1 marked as Exhibit 20?
 2 A. There was -- there was specific
 3 contaminants that came out of the subslab
 4 investigations, and they were being derived
 5 from the landfill underneath. We were given
 6 the option of either remediating the vapors
 7 that were potentially intruding, or another
 8 option, which is what we chose, was to take
 9 down a lot of the buildings.

10 Our concern with remediating is
 11 the installation cost was high and the
 12 long-term maintenance required testing every
 13 six months, every year, every two years. It
 14 was an ongoing expense.

15 Q. And so it sounds like the option
 16 that Valley Asphalt chose was to take down the
 17 buildings?

18 A. All but one, that is correct.

19 Q. Okay. Was the Quonset hut one of
 20 the old World War II era buildings?

21 A. Yes, sir. It has like an arched
 22 roof, and it was actually -- my understanding,
 23 it was deconstructed over when they built I-75,
 24 reconstructed on site back in the '40s and
 25 '50s.

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1 Q. Okay. And that was one of the
 2 buildings that was, I guess, demolished as part
 3 of the vapor intrusion work?
 4 A. Yes, sir.
 5 Q. Okay. Did the buildings come down
 6 before or after Valley Asphalt got the order in
 7 2013?

8 A. It was after. I mean, do you want
 9 the date of the demo?

10 Q. Sure.

11 A. I mean, that was November 13th of
 12 2013. So we met with them in April, and then
 13 between April and November we went through all
 14 the testing, verification, checking for
 15 hazardous materials within the buildings
 16 themselves, and had them properly removed.

17 Q. Did Valley Asphalt vacate the
 18 buildings before the unilateral order?

19 A. Some were vacated before, some
 20 were vacated after.

21 Q. Do you happen to remember which?

22 A. The Quonset hut office, the brick
 23 office on the front, was vacated before. The
 24 main office building -- do you want me to give
 25 you the number?

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1 Q. Sure.
 2 MR. LEWIS: It's on the map with
 3 the numbers, isn't it?
 4 THE WITNESS: It's on this one
 5 right here.
 6 MR. LEWIS: Yeah, with the
 7 numbers.

8 THE WITNESS: The office building
 9 is building number one. And then the Quonset
 10 hut office portion is part of number two. The
 11 back warehouse was still fully functional and
 12 used. Then the other buildings, building
 13 number five, building number six, were still in
 14 use. Building number seven was still used as
 15 storage.

16 And then there's also -- up in the
 17 upper right-hand corner, there's an MP that's
 18 not highlighted, that's Murphy's Plumbing.
 19 That one was still also in use, and there was a
 20 person operating there in 2013.

21 BY MR. ROMINE:

22 Q. Is he still operating?
 23 A. No, we had to -- we had to take
 24 out his office. It was a very small, ten by
 25 15, office. And then at some point he vacated

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1 the property. He was -- he is actually the
 2 only tenant that we had on the whole site.
 3 He sold old, historical toilets I
 4 guess I'll call them. They were, you know,
 5 purple and orange and, you know, ugly green,
 6 and people wanted them for restoration of old
 7 homes. And he had a pretty good business doing
 8 it. But that was separate from us, and it was
 9 on our property. He was a tenant.

10 Q. And during what period was
 11 Murphy's Plumbing a tenant of yours?

12 A. When we -- my understanding is
 13 when we bought the property, he was already
 14 pre-existing.

15 Q. I see. So he had a lease probably
 16 with the Grillots?

17 A. I believe that to be correct.

18 Q. And when you bought the property,
 19 you sort of became the landlord by inheritance
 20 or whatever?

21 A. Yes.

22 Q. And you kept him on as a tenant?

23 A. Yes, sir.

24 Q. So he had been there a long time?

25 A. Yeah, he has been there for a very

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1 long time.

2 Q. But he is not there now?

3 A. No, sir.

4 Q. He had to leave in 2013?

5 A. That is correct. That would be a
 6 revenue source that we lost because of the
 7 proceedings. That would be another financial
 8 concern that we had that I couldn't remember
 9 earlier.

10 Q. It sounds like he really didn't do
 11 any plumbing services. It sounds like he was
 12 more of a -- sold goods?

13 A. He had some inside sales, you
 14 know, like the internal mechanisms to the water
 15 tanks on toilets. He sold some sinks. He had
 16 some -- I think he had some stainless sinks,
 17 you know, big industrial size, so --

18 Q. But if my sink was clogged, I
 19 wouldn't call him and say come over and fix my
 20 sink?

21 A. No. No, he's not a plumber. He
 22 has retail sales.

23 Q. I just wanted to get an
 24 understanding of what kind of business he's in.

25 A. Okay.

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1 (Thereupon, Plaintiffs' Exhibit
 2 21, letter to Martin Lewis from the United
 3 States Environmental Protection Agency dated
 4 July 13, 2016, was marked for purposes of
 5 identification.)

6 MR. ROMINE: For those of you on
 7 the telephone, Exhibit 21 is a letter from US
 8 EPA to Valley Asphalt Corporation July 1, 2016,
 9 and the Bates numbers are 001110 through 1135.

10 BY MR. ROMINE:

11 Q. Have you seen Exhibit 21 before?

12 A. Yes, sir, I have.

13 Q. And what is it?

14 A. It's a bill from the US EPA
 15 directed to Valley Asphalt.

16 Q. And it's regarding the South
 17 Dayton Dump and Landfill, Moraine, Ohio?

18 A. Yes, sir.

19 Q. And how much is the bill for?

20 A. It's \$76,520.80.

21 Q. And did Valley Asphalt pay US EPA
 22 \$76,520.80?

23 A. We did pay the bill in full in the
 24 time frame requested.

25 Q. Has Valley Asphalt received any

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1 bills other than Exhibit 21 from EPA regarding
 2 the South Dayton Dump and Landfill?

3 A. Yes, sir, we did receive an
 4 additional bill.

5 Q. Was that before or after this?

6 A. After.

7 Q. Did Valley Asphalt receive any
 8 bills before this July 13, 2016, letter from US
 9 EPA regarding the South Dayton Dump and
 10 Landfill?

11 A. No, sir.

12 Q. When was the second bill?

13 A. The second bill was on
 14 November 18th, 2016.

15 MR. ROMINE: Okay. Have you
 16 produced that?

17 MR. LEWIS: Yeah.

18 MR. ROMINE: You have?

19 MR. LEWIS: I'm pretty sure I did.
 20 If not, I will, but I'm almost sure I did.

21 BY MR. ROMINE:

22 Q. How much was the second bill for?

23 A. \$20,050.37.

24 Q. And has Valley Asphalt paid that?

25 A. Yes, sir, we have paid that in

1 full in the time requested.
 2 Q. Okay. Other than bills, has --
 3 other than bills that you paid, Exhibit 21, and
 4 then the second bill in November of 2016, has
 5 Valley Asphalt paid EPA any money regarding the
 6 South Dayton Dump and Landfill?

7 A. No direct funds for the EPA.

8 (Thereupon, Plaintiffs' Exhibit
 9 22, letter to Leslie Patterson from Martin
 10 Lewis dated March 26, 2015, was marked for
 11 purposes of identification.)

12 MR. EDDY: This is Bob Eddy. Is
 13 this a convenient time for a break? We have
 14 been at it for quite a while.

15 MR. ROMINE: Sure. Do you want to
 16 take ten minutes?

17 MR. EDDY: Yeah, that would be
 18 great. Thanks.

19 (Recess taken.)

20 BY MR. ROMINE:

21 Q. I think right before the break,
 22 Mr. Crago, I had shown you Exhibit 22. And my
 23 question is have you seen Exhibit 22 before?

24 A. I have.

25 Q. And what is it?

1 A. This is a letter written by
 2 Mr. Marty Lewis, our counsel, directed to
 3 Leslie Patterson with US EPA, Region Five, and
 4 it's a response to a January 16, 2015, letter
 5 from the US EPA, special notice and request for
 6 information.

7 Q. And was there -- well, let me ask
 8 you this, you see in the bottom of the first
 9 paragraph it talks about a January 16, 2015,
 10 letter?

11 A. Yes, sir, I see that date.

12 Q. Okay. And I don't have it here
 13 today, but did Valley Asphalt get a letter on
 14 or about January 16, 2015, from US EPA?

15 A. I believe we have.

16 Q. Okay. And the letter says -- or
 17 Exhibit 22 says Valley Asphalt declines to
 18 reimburse US EPA for past costs at the site as
 19 demanded in the letter of January 16, 2015, and
 20 declines to conduct or finance a remedial
 21 investigation/feasibility study at the site.

22 Do you see that?

23 A. Yes, sir, I do.

24 Q. And has Valley Asphalt conducted
 25 or financed a remedial investigation

1 feasibility study at the site?

2 A. We have conducted, and we have
 3 financed that study.

4 Q. And what's the status of that?

5 A. That was the vapor intrusion, and
 6 we came to the conclusion it was more cost
 7 effective to take down several of our
 8 buildings, all of which were removed, and we
 9 have one remaining on site that we previously
 10 discussed.

11 Q. Okay. And other than the vapor
 12 intrusion work, though, have you done any work
 13 at the South Dayton Dump site?

14 A. We are doing normal maintenance
 15 right now, wintertime maintenance: We are
 16 trying to potentially look at an upgrade on the
 17 site. So normal operations. Nothing -- no big
 18 projects associated with environmental
 19 concerns.

20 Q. How about work that the US EPA has
 21 asked you to do?

22 A. I don't believe they have directly
 23 asked us to do any additional work other than
 24 the vapor intrusion, and we do have to do
 25 annual monitoring and reporting back to the EPA

1 on those results.

2 Q. I'd like to ask you to look at --
 3 do you see on -- I guess it's the fourth page
 4 of the document, it says response to requests
 5 for information?

6 A. Yes, I see it.

7 Q. Then if you go down to 16 L.

8 A. I see that.

9 Q. Okay. Office waste, approximately
 10 four cubic yards weekly. Do you see that?

11 A. Yes, I see that under -- yep.

12 Q. Has that remained approximately
 13 the same over time?

14 A. I believe so.

15 Q. Any more or less going back to
 16 '93?

17 A. No, I think it would be pretty
 18 consistent going back through. Under that same
 19 L, the second part of that talks about the
 20 recycled oil that we were consuming on site.
 21 Probably in the last four to five years with
 22 natural gas being at all time lows, we are not
 23 using the oil anymore, we are running natural
 24 gas.

25 Q. I see. Okay. So because natural

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1 gas is cheap, you have been using natural gas
 2 rather than recycled oil?
 3 A. Yes, sir.
 4 Q. That's to power the dryer?
 5 A. Yes, sir.
 6 Q. But going back before the last few
 7 years, Valley Asphalt was using approximately
 8 500 gallons per month of oil?
 9 A. That would be a fair number, yes.
 10 It would fluctuate depending upon production.
 11 Q. And then if you turn the next
 12 couple pages, there's -- it looks like we are
 13 still on 16 P 3. 16 P, as in Paul, 3.
 14 A. Okay, I see it.
 15 Q. Office number one had six
 16 personnel until it was shut down. And office
 17 number four has four personnel working
 18 full-time. Do you see that?
 19 A. Yes, sir.
 20 Q. Okay. So it looks like as of now,
 21 Valley Asphalt has four personnel working
 22 full-time during the March to December time
 23 frame?
 24 A. Yeah, that was above and beyond
 25 this six and four. Those were office staff,

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1 where plant staff are separate.
 2 Q. I see. So it was six plus four?
 3 A. Yeah. There was six plus four on
 4 the two different offices on site. So we had
 5 ten office personnel, and then we also had an
 6 additional four running the plant.
 7 Q. I see. Okay. So six plus four
 8 plus four?
 9 A. Yes, sir.
 10 Q. And are those ten people still
 11 working at the Dryden Road site?
 12 A. No, sir.
 13 Q. Those are the ones that are in
 14 Enon?
 15 A. Yes, sir.
 16 Q. Okay. Are the answers that you
 17 gave here or that Valley Asphalt gave here in
 18 Exhibit 22, are they true and correct to the
 19 best of your knowledge?
 20 A. At the time given, they were true
 21 and correct, yes, sir.
 22 Q. Is there anything that you'd like
 23 to correct? Is there anything different?
 24 A. No, I don't think there's anything
 25 that has changed.

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1 Q. Okay. Have you ever heard of a
 2 company called Doyle's Auto Salvage?
 3 A. I have not.
 4 Q. What was the name of the company
 5 where you said you saw them disposing of I
 6 think it was oil or something like that?
 7 A. I never knew the name. I knew
 8 there was old automobiles behind our facility
 9 on somebody else's property. I didn't know the
 10 company name or I didn't really know what their
 11 operations were. I saw vehicles sitting there,
 12 you know. Like I said, some leaked, some
 13 didn't.
 14 Q. Okay. Have you ever heard of a
 15 company called Pollard Trucking?
 16 A. I have not.
 17 Q. Apollo Trucking?
 18 A. I have not.
 19 Q. Dayton Recycling?
 20 A. I have not.
 21 Q. Moraine Transfer?
 22 A. I have not.
 23 (Thereupon, Plaintiffs' Exhibit
 24 23, letter to Valley Asphalt Corporation from
 25 Richard Doran dated April 14, 1999, was marked

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1 for purposes of identification.)
 2 BY MR. ROMINE:
 3 Q. Have you seen Exhibit 23 before?
 4 A. Yes, sir, I have.
 5 Q. And what is it?
 6 A. The front page is a continuation
 7 request or inquiry on continuation for a pipe.
 8 It's dated April 14th, 1999. If you look at
 9 page two and three, you -- it goes to an older
 10 document dated September 17, 1956. It looks
 11 like some sort of drainage pipe for dewatering
 12 some area on site. I believe it would be like
 13 kind of a dewatering pipe that would head
 14 toward the river.
 15 Q. And is the dewatering pipe still
 16 in use?
 17 A. We have pipes that are used for
 18 water flow that go toward the river. They are
 19 not -- they don't look similar to this. I
 20 would say they are different.
 21 Q. So as far as you know, this -- the
 22 pipe described in this permit is not in use?
 23 A. That is correct. I don't know
 24 where it is. I've never seen it.
 25 Q. Okay. But there are pipes that

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1 discharge into the Miami River?

2 A. We have pipes along the berm that
3 you talked about earlier to the west of our
4 property. We do have some, I would say,
5 six-inch pipes going through that berm for --
6 if water backed up, it would allow water to
7 flow toward the river into kind of a grassy
8 swale area. They are not direct discharge. We
9 do monitor those for water quality.

10 Q. You do monitor them for water
11 quality?

12 A. Yes, sir.

13 Q. Do you know if it so happened that
14 the Valley Asphalt property has had water or
15 flooding such that those pipes have been in
16 use?

17 A. Yes, we have had flow going
18 through those pipes.

19 Q. From time to time?

20 A. Yes, sir.

21 Q. Are those pipes used for the
22 disposal of anything?

23 A. No.

24 (Thereupon, Plaintiffs' Exhibit
25 24, contract between Valley Asphalt and

1 Q. I see. And it says 22.5 to 23.5
2 feet of fill composed of black cinders with
3 varying amounts of coal, sand, gravel, wood,
4 glass, steel wire, and paper. Do you see that?

5 A. Yes, I see that line.

6 Q. Is that accurate?

7 A. I did not personally see it, but
8 I'm assuming -- you know, Bowser-Morner is a
9 very reputable company. So if they said it was
10 there, they would have taken samples with split
11 spoon technology, and I'm assuming it's
12 correct.

13 Q. And where did that fill come from?

14 A. I'm assuming it's part of the
15 original fill conditions at the South Dayton
16 Dump.

17 Q. When did that fill happen?

18 A. I would assume it predated our
19 1956 asphalt plant.

20 Q. And you assume that because the
21 1956 asphalt plant was built on top of the
22 grade level?

23 A. Yeah, as close to that area. So
24 we would have had the plant or something there.

25 Q. And if you could turn to page 31.

1 Bowser-Morner, was marked for purposes of
2 identification.)

3 MR. ROMINE: For those of you on the
4 telephone, this is a document Bates stamped 000026
5 through 34.

6 BY MR. ROMINE:

7 Q. Mr. Crago, have you seen this
8 document before?

9 A. I have seen this document.

10 Q. And what is it?

11 A. This is a contract between Valley
12 Asphalt and Bowser-Morner company. They did a
13 subsurface soil investigation, and our intent
14 was when we were looking at locating a new
15 plant there in 1986, 1987, we wanted to know
16 the subsurface conditions, whether it would
17 support silos and other plant operations.

18 Q. So this was done in connection
19 with your buying the plant in Pennsylvania?

20 A. Yes, sir.

21 Q. If you look at page 28, it talks
22 about the soil conditions. And is it accurate
23 that these are the soil conditions on the
24 Valley Asphalt property in Moraine?

25 A. Under the silo locations, yes.

1 A. Okay.

2 Q. It talks about methane gas.

3 A. Okay.

4 Q. And am I correct that this report
5 says that methane gas was discovered as part of
6 Bowser-Morner's investigation?

7 A. Yes, it looks like part of their
8 drilling operation they incurred and actually
9 tested for some certain levels of methane gas.

10 Q. Was the methane gas part of what
11 was addressed in the administrative order that
12 we saw a few minutes ago?

13 A. Yes.

14 Q. Did Valley Asphalt address the
15 methane gas issue between 1987 and 2013?

16 A. No.

17 (Thereupon, Plaintiffs' Exhibit
18 25, Form 1: Building Physical Survey
19 Questionnaire, was marked for purposes of
20 identification.)

21 THE WITNESS: With reference to
22 the methane gas question you just asked me, one
23 caveat to that I will say is we have done an
24 extensive amount of paving on site, which
25 would, in fact, encapsulate methane gas. Our

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Box Cram, P.P.

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1 intent I can't say was directly involved in
 2 trying to capture that, but that was a benefit
 3 in doing that.

4 BY MR. ROMINE:

5 Q. Have you seen Exhibit 25 before?
 6 A. Yes, I have.
 7 Q. And what is it?
 8 A. This looks like a field report,
 9 and then I think there's even more in-depth --
 10 maybe some lab information that was done by
 11 Conestoga-Rovers. The inspector is Adam Loney.
 12 He is an individual that I had several dealings
 13 with over the -- over several years on site.

14 Q. And did you participate in a
 15 walk-through with Mr. Loney on or about
 16 June 22nd, 2011?

17 A. I don't have direct reference to
 18 that, but that sounds correct. I met with Adam
 19 on site numerous times, so I don't have all of
 20 our meetings on site --

21 Q. Okay.

22 A. -- documented.

23 Q. All right. If you look at the --
 24 I guess maybe two-thirds of the way down the
 25 very first page, it says previous uses.

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Box Cram, P.P.

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1 John R. Jurgensen Construction Company?

2 A. It would be very similar.

3 Q. Very similar?

4 A. Yes.

5 Q. Why was it two different
 6 companies?

7 A. We purchased Titus Construction,
 8 and it's common for us to keep the pre-existing
 9 company name. So a very small company, but
 10 when we purchased them, we kept the Titus name,
 11 and they operated out of the office there on
 12 Dryden Road.

13 Q. Did Titus Construction operate out
 14 of the Dryden Road location before the
 15 Jurgensens bought it?

16 A. No, I do not believe so.

17 Q. It was somewhere else?

18 A. Yes.

19 Q. Does Valley Asphalt have contracts
 20 with the federal government for road
 21 construction?

22 A. Yes, sir, we do.

23 Q. In addition to the state of Ohio?

24 A. Yes.

25 Q. And do they have -- does the

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Box Cram, P.P.

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1 A. Okay, I see it.

2 Q. And does this refresh your
 3 recollection regarding Titus Construction or
 4 Dayton Recycling?

5 A. Yeah, Titus Construction I was
 6 clear earlier was a subcompany of ours.
 7 Q. It was. Okay. I see.
 8 A. That was the one, they had an
 9 office on the front in the Quonset hut
 10 building.

11 Q. Okay.

12 A. I see that Ottoson Recycling
 13 [sic], which is one that I think we talked
 14 about earlier rehabbing the barrels. Dayton
 15 Recycling, I see it listed here, but I still
 16 don't recollect who they were.

17 Q. It also says Ohio State. I'm
 18 assuming that's the state of Ohio rather than
 19 the university, but I'm not sure.

20 A. You've got to watch those
 21 Buckeyes.

22 Q. Do you know what that refers to?

23 A. I do not.

24 Q. Okay. And was Titus Construction
 25 in a line of business different from the

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Box Cram, P.P.

Box Cram, P.P.

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1 federal government have quality control
 2 requirements similar to the state of Ohio's
 3 requirements?

4 A. Yeah, they would be very similar.
 5 Q. Very similar? Do you know if they
 6 are exactly the same?

7 A. The type of testing methods might
 8 be exactly the same, but the frequency of
 9 testing would be different.

10 Q. The federal government is more
 11 frequent or less frequent?

12 A. There's several branches of the
 13 federal government. One would be state
 14 highway, another might be airport. So when you
 15 say federal government, we deal with a couple
 16 different branches. So I'll kind of try to
 17 answer all of them at one time.

18 Q. Sure.

19 A. Usually the federal government is
 20 a little more stringent. They require more
 21 testing, more frequency. They require us to
 22 run a test, and then they will document or
 23 actually do a sister test to that. So similar
 24 tests, but more frequent.

25 Q. And is that spelled out in the

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1 construction contracts as to the testing
2 procedures?

3 A. Yes, they are very specific.

4 Q. The same with the state of Ohio?

5 A. Yes, sir.

6 MR. ROMINE: I think that's all I
7 have for right now. We may have some
8 follow-up, but in the interest of time, we'll
9 turn it over to other counsel, and then if we
10 have more, we'll try and take it up at a later
11 time. Thank you very much, Mr. Crago.

12 MR. LEWIS: Thank you, Dave.

13 Frank, I just have a couple questions. Do you
14 want to go first, and or me just follow up at
15 the end? Do you want me to do it now?

16 MR. MERRILL: Why don't you do it
17 now.

18 MR. LEWIS: I may have some
19 follow-ups, but I only have a few direct
20 questions, and then I'll be done.

21 DIRECT EXAMINATION

22 BY MR. LEWIS:

23 Q. Mr. Crago, Mr. Romine cited
24 Exhibit 20, which was the South Dayton Dump and
25 Landfill site unilateral administrative order.

1 That was the order issued by US EPA March 22nd,

2 2013, to Valley Asphalt, correct?

3 A. Yes, sir.

4 Q. And that was the order we
5 discussed at US EPA in that meeting I believe
6 in April of 2013; is that correct?

7 A. That is correct.

8 Q. Is it your recollection that
9 Valley Asphalt told US EPA that it would comply
10 with the order in full?

11 A. Yes, our intent and our
12 discussions verbally were to, you know, comply.

13 Q. And who have you been dealing with
14 in the implementation of that?

15 A. Our primary contact is Steve
16 Renninger with the US EPA.

17 Q. To your knowledge, has
18 Mr. Renninger ever given us any notice of any
19 displeasure of anything we have been doing or
20 anything Valley Asphalt has been doing?

21 A. Yeah, Steve has personally spoken
22 to me about our response to this, and he said
23 absolutely without doubt we have responded
24 faster, more efficiently, more professionally,
25 more environmentally sound than anybody else

1 involved with the projects.

2 Q. And as part of the implementation
3 of that order, you testified to Mr. Romine that
4 we -- that Valley Asphalt paid the oversight
5 cost bills that were presented to them,
6 correct?

7 A. Yes, sir.

8 Q. As part of the implementation of
9 the order, did Valley Asphalt have to engage a
10 consultant with the approval of US EPA?

11 A. Yes.

12 Q. And what consultant was engaged?

13 A. The primary consultant was
14 Bowser-Morner located here in Dayton, Ohio. We
15 had to -- we had to name a project manager to
16 handle the subsurface investigation and
17 remediation for the vapor intrusion.

18 Q. And has Valley Asphalt paid all
19 their bills directly?

20 A. Yes, sir.

21 Q. And do you have an idea of how
22 much those bills have been to date
23 approximately?

24 A. We're approximately \$180,000
25 directly to Bowser-Morner.

1 Q. For implementation of the order

2 from US EPA, correct?

3 A. Yes, sir.

4 Q. And do you foresee that those
5 expenses will continue?

6 A. Yes, they will. Yes, they will
7 continue.

8 Q. For what tasks?

9 A. We have to continually monitor the
10 subslab vapor intrusion system to make sure
11 it's operating properly. So every cycle, we
12 have to go out and do interior air monitoring
13 and subslab air monitoring to prove the system
14 is working.

15 Q. And for how long will that
16 continue?

17 A. We were not given a date of
18 stopping it. As long as we have a building
19 there with a slab with the system on it, we
20 have to monitor it.

21 Q. And is Valley Asphalt's intent to
22 continue that monitoring?

23 A. Yes, sir.

24 Q. You mentioned the buildings. Is
25 part of -- I don't want to be redundant, but

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1 you did testify as part of the implementation
 2 of the order from EPA regarding vapor
 3 intrusion, a number of buildings were
 4 demolished, correct?

5 A. Yes, sir.

6 Q. And who actually did the
 7 demolition? Did Valley Asphalt do that,
 8 Bowser-Morner, or another vendor?

9 A. We had to have some specific
 10 materials removed before demolition. There was
 11 some material that contained asbestos and some
 12 coverings that contained lead, so those had to
 13 be done by independent contractors that were
 14 licensed to do that. And then once all the
 15 hazardous materials were removed within the
 16 building, we actually demoed it with our own
 17 crews.

18 Q. Now, a few minutes ago you
 19 testified about the amount paid to
 20 Bowser-Morner to implement this project.

21 A. Yes.

22 Q. Were there separate and additional
 23 payments to those subcontractors involved with
 24 the demolition or removal of asbestos, lead,
 25 et cetera, prior to demolition?

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1 A. Yes, we had to incur additional
 2 costs both for the hazardous material removal
 3 and the building demolition material to be
 4 removed.

5 Q. And do you know approximately how
 6 much that was?

7 A. I would guess that to be \$30,000.

8 Q. And that was in addition to the

9 Bowser-Morner costs?

10 A. Yes, sir.

11 Q. And then finally, one more
 12 question, Mr. Romine asked you whether the
 13 order addressed methane, the order that we --
 14 that Valley Asphalt has been complying with,
 15 and you testified, I believe, that was one
 16 component?

17 A. Yes.

18 Q. Were there other VOCs or elements
 19 of concern which had to be addressed in the
 20 vapor intrusion issue?

21 A. Yeah, there's a list of
 22 contaminants that had to be -- that were
 23 initially monitored or came out in the test
 24 results, and then they had to be checked over
 25 time.

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1 Q. Methane was just one of many?
 2 A. Methane was one.

3 MR. LEWIS: No further questions
 4 at this time. I may have some follow-up, but
 5 I'm done. Thank you very much.

6 THE WITNESS: Thank you.

7 MR. MERRILL: Can I take two
 8 minutes and switch seats, because I think it
 9 will be -- expedite the court reporter.

10 (Thereupon, an off-the-record
 11 discussion was held.)

12 CROSS-EXAMINATION

13 BY MR. MERRILL:

14 Q. My name is Frank Merrill,
 15 Mr. Crago, and I'm an attorney with Bricker &
 16 Eckler and representing The Dayton Power and
 17 Light Company in this lawsuit. So I'm going to
 18 ask you questions similar to what Mr. Romine --

19 A. Okay.

20 Q. -- just asked you. So I just want
 21 to kind of follow up on a couple questions, and
 22 then I have some, I guess, questions for
 23 myself.

24 So you testified that your
 25 background is as an engineer; is that correct?

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1 A. Yes, sir.

2 Q. And I notice on your card it
 3 indicates you are a PE.

4 A. Yes, sir.

5 Q. You are a professional engineer?

6 A. Yeah, I'm a professional engineer
 7 licensed in Ohio, Kentucky, and Indiana.

8 Q. Okay. And is there a certain area
 9 of expertise of your engineering professional
 10 licensure?

11 A. Professional engineering now is
 12 getting more specific. At the time that I
 13 actually sat for and passed my PE license, it
 14 was general. So it wasn't mechanical
 15 engineering, electrical engineering, as it is
 16 today. It was actually more of a general civil
 17 engineering.

18 Q. What is -- is there an area of
 19 specialty in engineering that you hold yourself
 20 out to be or feel that is your area of
 21 expertise?

22 A. I have got 23 years of
 23 environmental field work, designs, testing,
 24 investigation, site remediation. So a fair
 25 amount of hands-on field experience on the

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1 environmental front.

2 Q. So it sounds like, based on your
3 testimony, you have had a very vast experience
4 in the concrete and asphalt business; would
5 that be correct?

6 A. That would be a fair statement.

7 Q. And the Jurgensen companies, or I
8 believe Valley Asphalt -- let me step back.
9 Can you just maybe provide me with a snapshot
10 of the corporate structure for Valley Asphalt?

11 A. Yes. Valley Asphalt Corporation
12 is listed as the parent company. John R.
13 Jurgensen Company is a subsidiary of Valley
14 Asphalt. And I call it a sister company. And
15 then there's, you know, a few other similar
16 type organizations that fall under the same
17 umbrella as sister companies.

18 Q. And what do they do?

19 A. Pretty much our whole business is
20 involved in construction. So we produce
21 aggregates, sand and gravel, limestone
22 products, and quarry and sand and gravel
23 operations. We have hot mix asphalt plants
24 that actually take the sand and gravel, add
25 liquid asphalt to it to make hot mix. Then we

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1 have construction crews that do both paving and
2 other types of construction in the field.

3 Q. Is it all flexible pavement?

4 A. No, we do concrete work, we do
5 heavy highway construction, a lot of dirt
6 moving, a lot of excavation. So it's -- it has
7 a variety of different areas.

8 Q. Okay. In your experience with
9 the -- in the concrete and asphalt business,
10 have you ever experienced use of alternative
11 raw materials in the production of concrete or
12 asphalt, something not aggregate that's mined?
13 For example, use of like slag, a byproduct?

14 A. Yes, I have seen that used before.

15 Q. Do you -- does Valley Asphalt use
16 any slag in their production?

17 A. We have used slag in our
18 production.

19 Q. And where does the slag usually
20 come from?

21 A. Probably the largest local source
22 is Middletown Steel, AK Steel, located in
23 Middletown, Ohio.

24 Q. And can you describe for me what
25 slag is?

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1 A. Slag is a byproduct of steel
2 production. There's two main slag definitions.
3 One is called bottom or boiler slag, which
4 is -- it's very heavy, very dense, almost
5 steel-like, and it's contaminants that come out
6 of the production of steel. And then there's
7 also a very lightweight slag that's -- it's a
8 derivative of placing limestone on top of the
9 kettle during molten making -- you know,
10 production of steel, and then, again, it's kind
11 of a contaminant coming out of the steel
12 production.

13 Q. What about the use of fly ash or
14 bottom ash, have you ever seen that used in
15 the -- as a raw material additive for concrete
16 or asphalt?

17 A. Fly ash I believe is used as a
18 standard in concrete today. It's an extender
19 for the cement. So you can reduce cement by
20 adding fly ash to concrete. We don't use fly
21 ash in asphalt production.

22 Q. Do you use bottom ash in concrete
23 production?

24 A. Not ash, no. Or in concrete? You
25 said in concrete?

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1 Q. Concrete.

2 A. We don't produce concrete. So
3 when I say it's used, Valley Asphalt doesn't
4 have a concrete plant, so we are not directly
5 producing it. It's more of what I have read in
6 technical magazines and seen used in the field.

7 Q. So Valley Asphalt doesn't use any
8 fly ash in the production of concrete?

9 A. No, sir.

10 Q. Okay. But through your
11 professional experience, it is used in the
12 concrete business?

13 A. Yes, sir.

14 Q. You mentioned at the Valley
15 Asphalt plant number six on Dryden Road, kind
16 of the facility in question --

17 A. Uh-huh.

18 Q. -- you have aggregate piles?

19 A. Yes, sir.

20 Q. And what actually is in those
21 aggregate piles?

22 A. The aggregate will be brought to
23 site in different sizes. So you'll have very
24 fine sand. That could either be limestone or
25 natural sand. Then you'll have a larger size

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1 stone. It might be called like a number eight
 2 size stone. And these are meshes that they are
 3 measured on. And then you might have a number
 4 57 size stone, which is getting up to maybe an
 5 inch and a half in size. And then occasionally
 6 you'll bring in even a larger stone, it might
 7 be two to two and a half inches in diameter.
 8 It's called a number four size stone.

9 Q. And the aggregate that's used at
 10 plant number six, does all of that aggregate
 11 come from the Valley Asphalt mining operations?

12 A. No, very little does actually at
 13 that site.

14 Q. But the Valley Asphalt family, the
 15 larger family we talked about earlier --

16 A. Yes.

17 Q. -- you do have mining -- aggregate
 18 mining operations within that umbrella; is that
 19 correct?

20 A. Yes, sir.

21 Q. But the aggregate that you're
 22 using at plant number six, not a lot of it is
 23 coming from a business that is owned or
 24 controlled by Valley Asphalt; is that correct?

25 A. That's correct, most of the local

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1 sources to that plant are external to us.

2 Q. And where do you get most of your
 3 aggregate for that plant?

4 A. One large vendor is Martin
 5 Marietta in Phillipsburg, Ohio. It's a little
 6 bit northwest of Dayton, kind of directly west
 7 of the Dayton Airport. It's a limestone
 8 operation, very good quality. We use that in a
 9 lot of our work. Sand and gravel, again,
 10 Martin Marietta has some facilities in and
 11 around the Dayton area where we bring sand and
 12 gravel into Dryden Road.

13 Q. Do you ever test the sand and
 14 gravel prior to acceptance?

15 A. Yes, all of it.

16 Q. And what type of tests do you run?

17 A. We usually run gradations,
 18 specific gravity absorption, typical quality
 19 tests.

20 Q. Any chemical tests on the
 21 material?

22 A. Not usually.

23 Q. Let's talk, then, a little bit
 24 about -- I think it's called RAP?

25 A. Yes.

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1 Q. The recycled asphalt?

2 A. Pavement.

3 Q. Pavement?

4 A. Yes.

5 Q. What's the typical source for the
 6 RAP that's used at plant six?

7 A. At Dryden Road, it would come from
 8 close proximity paving projects where they are
 9 removing asphalt pavement. So it would be a
 10 certain window or a certain area around the
 11 plant that's in close proximity.

12 Q. But not necessarily a Valley
 13 Asphalt controlled project?

14 A. No. And it may not even be our
 15 original asphalt. There's numerous asphalt
 16 production companies that we don't own and we
 17 are not involved with that they might have
 18 paved a road 15 years ago, and it gets removed
 19 and brought back to us.

20 Q. Do you run any chemical tests on
 21 the RAP that you receive?

22 A. No, we do not run chemical tests
 23 on the RAP. We run gradations and we run
 24 extractions so we know the size and the liquid
 25 asphalt content.

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1 Q. Do you ever run any tests on the
 2 RAP piles at plant six for polycyclic
 3 aromatic hydrocarbons?

4 A. We have not.

5 Q. You have not?

6 A. No.

7 Q. Have you ever run any soil tests
 8 at plant six that include polycyclic
 9 aromatic hydrocarbons?

10 A. The subsurface investigation was
 11 done by Bowser-Morner for our footers for our
 12 plant. There was quite a few tests listed
 13 there. I don't know for sure if they had the
 14 PAH run on those. The subslab investigation
 15 was done in accordance with the federal EPA in
 16 2012, 2013. There's an extensive amount of,
 17 you know, testing done there.

18 So I don't know that I could
 19 directly answer, you know, what specific tests
 20 and what they showed, but I'm assuming those
 21 would have had that.

22 Q. In your experience as a
 23 professional engineer in the asphalt business,
 24 is it your opinion that PAH is -- polycyclic
 25 aromatic hydrocarbons are a common constituent of

1 asphalt?

2 A. They are a component, yes. I
3 mean, I would say maybe a small component.

4 Q. Have you ever testified as an
5 expert witness?

6 A. Yes.

7 Q. And how many times?

8 A. I would say maybe two.

9 Q. Can you give me a summary of the
10 cases -- those two cases?

11 A. The first case I referenced was
earlier was -- it was a case where concrete was
placed on a residential complex, the garage was
built, elevations were wrong, concrete was
poured poorly, and I was brought in as an
expert witness as far as the material sourcing
and actually the geometry of the placement of
the driveway. So it just wasn't placed
properly.

20 Q. What was the area of expertise
that you were qualified to render an opinion?

22 A. Material testing and understanding
basic geometry, according to the judge.

24 Q. And where was this case?

25 A. Cincinnati.

1 Q. Do you recall if it was in
2 Municipal Court or Common Pleas?

3 A. It was -- I don't know that I
4 could distinguish between the two. Sorry.

5 Q. Fair enough.

6 A. It was downtown Cincinnati.

7 Q. Do you remember the case name?

8 A. No. It was Sherry Moore, she was
9 the homeowner, versus the concrete company,
10 construction company, that placed the concrete.

11 Q. And who did you testify for?

12 A. Sherry Moore.

13 Q. The plaintiff in the case?

14 A. Yes.

15 Q. And the second case where you were
16 qualified as an expert witness?

17 A. I have been used usually for --
18 when we are expanding operations, we might be
19 buying new property, we have had court cases
20 where I've been brought in to testify on
21 asphalt production. And usually I'm dealing
22 with either the EPA or local zoning, and I'm
23 speaking on behalf of emissions from an asphalt
24 plant, both air, water, storm water runoff.

25 Q. Do you recall how many times

1 you've testified as an expert witness in that
2 regard?

3 A. Most of them are public hearings,
4 so when you say testified, I don't know the
5 legality of it. I was at an official public
6 hearing and, you know, I don't know where the
7 legality of -- I wasn't in a court setting, but
8 I was in a legal hearing testifying on behalf
9 of the asphalt plants.

10 Q. You were testifying on behalf of
11 Valley Asphalt --

12 A. Yes.

13 Q. -- or a company?

14 A. Valley Asphalt typically, yes.

15 Q. Let's look at Exhibit 5.

16 A. Okay.

17 MR. LEWIS: Is that the big map?

18 MR. MERRILL: The big map.

19 THE WITNESS: I have it right
here. Okay. I have Exhibit 5 in front of me.

20 MR. MERRILL: For the folks on the
phone, Exhibit 5 is a Bowser-Morner site map
approximate boundary of Valley Asphalt site,
more than likely dated around 2012.

25 BY MR. MERRILL:

1 Q. And Mr. Crago --

2 MR. EDDY: I'm sorry. I don't
3 mean to interrupt, Frank. I thought you were
4 done. I was just going to ask you to repeat
5 the number on that again.

6 MR. MERRILL: It's Exhibit 5.

7 There's no Bates stamp number on it. It was
8 provided by counsel for Valley Asphalt prior to
9 the deposition to assist in the deposition.

10 MR. EDDY: Very good.

11 MR. MERRILL: But it's essentially
12 an aerial map of the South Dayton Dump area,
13 including the Valley Asphalt facility.

14 BY MR. MERRILL:

15 Q. And Mr. Crago, I believe you
16 testified earlier that the area within the
17 yellow highlighted area is the Valley Asphalt
18 property; is that correct?

19 A. I believe so, that is correct.

20 Q. Can you identify on Exhibit 5
21 approximately where the Quonset hut is located
22 or was located?

23 A. Yes. It's building number two.
24 It's highlighted in pink.

25 Q. And is that also the location or

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1 former location for Ottoson Solvents?
 2 A. My understanding is yes.
 3 Q. Could you identify on Exhibit 5
 4 where the drums were uncovered in 2000 during
 5 the waterline excavation?
 6 A. Yes. Do you see building number
 7 one?
 8 Q. Yes.
 9 A. That's our old office building.
 10 We were bringing the waterline to that. So
 11 there's a line kind of extending to the back of
 12 that building number one, and that almost looks
 13 like the line that we were digging. And I
 14 would say approximately 30 to 40 feet straight
 15 south of building number one is where we hit
 16 the barrels.
 17 Q. Could you mark an X on Exhibit 5
 18 where the approximate location of those -- that
 19 barrel excavation occurred?
 20 A. I marked an X in blue, and I
 21 circled it. Do you want me to put barrels?
 22 Q. Yeah, if you could.
 23 A. Okay.
 24 Q. Let me ask you some questions
 25 about this 2000 barrel excavation. Valley

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1 A. I don't know. I don't know if
 2 there's -- if there's a sanitary sewer tied to
 3 the city or not.
 4 Q. Currently how does Valley Asphalt
 5 receive potable water for plant number six?
 6 A. When you say potable, I'm assuming
 7 you mean drinking water.
 8 Q. Drinking water, that's correct.
 9 A. Five-gallon jugs.
 10 Q. Are there toilet facilities on
 11 site?
 12 A. I believe there is a toilet
 13 facility inside the control building.
 14 Q. And where does it discharge to?
 15 A. I don't know. My understanding is
 16 it is tied to the city lines, but I do not have
 17 documentation as such.
 18 Q. So you believe that there's a city
 19 sewer line somewhere in that vicinity of the
 20 plant number six?
 21 A. Yes.
 22 (Thereupon, Deposition Exhibit 26,

23 Environmental Remediation Report at Valley
 24 Asphalt prepared by David M. Scardino dated
 25 September 5th, 2000, was marked for purposes of

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1 Asphalt was in the process of extending a
 2 potable waterline to the office building; is
 3 that correct?
 4 A. I believe that is correct. It was
 5 either a sanitary line or a potable line. I
 6 don't know which.
 7 Q. Prior to 2000, where did the
 8 potable water come from for the Valley Asphalt
 9 site?
 10 A. They were -- for drinking water,
 11 they were using five-gallon, you know, jugs in
 12 the office area.
 13 Q. What about sanitary sewer?
 14 A. Sanitary sewer, my understanding
 15 is that was on a well.
 16 Q. Okay. So when they -- the sewage
 17 would go into a well or a septic system?
 18 A. No. No, the water coming in for
 19 the toilets and the sinks came from the well.
 20 Q. There was a well on site?
 21 A. Yes.
 22 Q. Okay. And then where was the
 23 sewage discharged?
 24 A. I don't know.
 25 Q. Was there a septic system on site?

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1 identification.)
 2 MR. MERRILL: I have handed the
 3 witness what has been marked Deposition Exhibit
 4 26. We are just going to keep the numerical order
 5 of exhibits. And it's a document titled
 6 Environmental Remediation Report at Valley
 7 Asphalt, Dryden Road, prepared for Valley Asphalt
 8 by David Scardino at TCA Environmental. It's
 9 dated September 5th, 2000.
 10 BY MR. MERRILL:
 11 Q. Mr. Crago, have you seen this
 12 document before?
 13 A. Yes, I have.
 14 Q. And can you explain for us what
 15 this document is?
 16 A. This is kind of all the testing
 17 and the steps that were taken with the barrels
 18 that were discovered during our trenching
 19 operations. Mr. Scardino was working directly
 20 with the EPA. He developed a remediation plan
 21 to dispose of the barrels and to seal up the
 22 trench.
 23 Q. Did Mr. Scardino take any soil
 24 samples as part of this investigation?
 25 A. Yeah, I believe there's soil --

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1 solid samples referenced within this document.

2 Q. Do you recall if the soil samples

3 indicated contamination of VOCs in excess of

4 regulatory limits?

5 A. I don't know that the -- they are

6 volatile. The samples that were taken were

7 solid soils and then liquids. And I know under

8 the testing for those, on this one page here,

9 they are showing 75,000 parts under PCB 1254.

10 There's an extensive amount of

11 test data here with different contaminants.

12 But I can't say that they were tested as

13 volatiles. My understanding is they would be a

14 chemical test, not a volatile test.

15 Q. Unfortunately this document is

16 not -- the pages aren't numbered. But I'm

17 going to show you a page --

18 A. Okay.

19 Q. -- volatile organic analysis, and

20 maybe that will refresh your memory. It looks

21 like there's a detection of trichloroethene?

22 A. Okay.

23 Q. What is that, 50 --

24 A. 59.

25 Q. 59. And those are parts per

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1 A. We currently own it today, yes.

2 MR. EDDY: I did not hear the

3 witness's response to that.

4 THE WITNESS: We do own the

5 property where the barrels were extracted,

6 Valley Asphalt.

7 MR. EDDY: Thank you.

8 BY MR. MERRILL:

9 Q. This report was prepared by TCA

10 Environmental?

11 A. Yes, sir.

12 Q. Do you know, do you still use TCA

13 Environmental?

14 A. We haven't used them, I don't

15 think, you know, beyond this report, or this

16 investigation.

17 Q. When is the last time you've

18 talked with David Scardino?

19 A. I dealt with David on two

20 projects. This was one, and we did one other

21 about the same time frame down in Cincinnati.

22 It was a tank removal. So I'll bet I haven't

23 talked to David in, I don't know, ten

24 years maybe.

25 Q. Do you know if David is still

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1 billion?

2 A. Per kilogram. That's -- it's a

3 fractional part of grams per kilogram.

4 Q. Okay.

5 A. I think it's ten to the negative

6 nine.

7 Q. And ethyl benzene, toluene?

8 A. Yes.

9 Q. Xylene?

10 A. Yes, sir.

11 Q. So, I mean, is it -- I'll let you

12 have as much time as you want with the

13 document, but I guess what I'm trying to get on

14 the record is that the investigation indicated

15 through the analysis, the soil analysis, that

16 VOCs and PCBs were detected at this barrel

17 trench area.

18 A. I would agree with that.

19 Q. And, in fact, didn't some of the

20 soils have to be manifested off site as

21 hazardous waste?

22 A. Yes, sir, there was soils,

23 barrels, liquids.

24 Q. And does Valley Asphalt own the

25 property where this barrel excavation occurred?

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1 around?

2 A. I don't. He was local at one

3 point, but I -- I haven't gone trying to find

4 him recently.

5 Q. Do you know if TCA Environmental

6 is still in business?

7 A. I don't know.

8 Q. So this document that has been

9 identified as Exhibit 26, is this a document

10 that's a business record for Valley Asphalt

11 that's kept in the normal, ordinary course of

12 business?

13 A. This would be, but this was a

14 document that I was not able to locate. I knew

15 it was taken at one time. I knew it was

16 available at one time, because David handled

17 this project turnkey for us. So we said EPA

18 is, you know, requesting specific steps, you

19 know, go through those steps for them, handle

20 everything properly. That's when he created

21 this document. I never had this within my

22 records, and then it was produced -- it was

23 given to me recently.

24 Q. Let me ask you a couple other

25 questions regarding the barrel excavation.

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1 After the barrels were discovered, you
 2 indicated that, you know, it was all hands on
 3 deck. You had Ohio EPA there, the fire
 4 department, the police department, and everyone
 5 else, it looks like all the first responders;
 6 is that correct?

7 A. And the news crew.

8 Q. And the news crew.

9 A. Uh-huh.

10 Q. After David Scardino and TCA
 11 generated this report, what happened next with
 12 respect to the barrel site, as in responses,
 13 reactions from Ohio EPA or US EPA?

14 A. The issue was closed. The
 15 excavation site was filled properly with inert
 16 materials, the report was filed, the hazardous
 17 material was disposed of off site properly, and
 18 my understanding was that it was a done deal,
 19 you know, finished, completed.

20 Q. Is that your understanding now?

21 A. Yes.

22 Q. Have you had any conversations
 23 with Ohio EPA or US EPA regarding this barrel
 24 excavation since this report in 2000?

25 A. I don't believe I've had any

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1 direct conversations with them. The barrels,
 2 you know, are -- you know, the location is
 3 talked about occasionally. There was one
 4 instance where -- and I can give you the
 5 date -- the Ohio EPA came on site with I
 6 believe Conestoga-Rover, were interested in
 7 trying to locate the barrel location, were
 8 doing a bunch of studies.

9 So I went out, and I said right
 10 here is where the barrels -- where we hit them.
 11 They did a dig there. I think they dug in four
 12 locations, one of which is exactly where I told
 13 them. They located one barrel at about a depth
 14 of, I'd say, 25 to 30 feet. They extracted it
 15 and tested it and filled it, filled the site
 16 back in.

17 Q. And approximately when was that?

18 A. I show that 10-8 of '08.

19 Q. 2008?

20 A. Yes, sir.

21 Q. Have you ever had a meeting or do
 22 you know a guy named Matt Justice with Ohio
 23 EPA?

24 A. It sounds familiar, but I don't
 25 recall who he is.

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1 Q. Is it your understanding that
 2 there are no barrels left on the Valley Asphalt
 3 property, that they have all been removed?

4 A. I don't know that they have all
 5 been removed. We ran into a portion of them,
 6 and what we exposed we pulled out and removed.
 7 I don't know if there's others in that
 8 proximity. I know there's been extensive
 9 studies by the federal EPA, the Ohio EPA, and
 10 Conestoga-Rover with ground penetrating radar
 11 trying to locate solid objects underground.

12 Q. And what was the result of that
 13 ground penetrating radar analysis?

14 A. I was never given the results.
 15 That was done by the PRP group, and we were --
 16 even though we were participating to the extent
 17 that we would let them come on our property and
 18 test, we were never given the results. So I
 19 don't know what they found or didn't find.

20 Q. You mentioned this meeting you had
 21 with US EPA in Chicago. Was it 2012?

22 A. Yes.

23 Q. Tell me a little bit about that
 24 meeting. Why did you go to that meeting?

25 A. I think we were contacted in

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1 writing legally, and Steve Renninger said that
 2 we have to have a direct immediate meeting. He
 3 said within the next week time frame we need to
 4 sit down face to face. I said that's fine with
 5 us. I contacted Marty Lewis. I said they are
 6 requesting a direct, face-to-face meeting.

7 And at that point, we were
 8 notified by -- from Steve Renninger that they
 9 wanted the meeting in Chicago at EPA, US EPA,
 10 Region Five's, main office.

11 Q. What was the problem? I'm sorry
 12 to interrupt.

13 A. I guess from a legal point of
 14 view, I think they wanted to know where our
 15 stance was, because I think in writing and
 16 letters we were taking the stance that we
 17 weren't really directly involved. We have
 18 never disposed of any waste in the landfill.
 19 We have never disposed of any waste on our
 20 property. And we wanted to participate with
 21 the remediation, but we didn't want to be
 22 brought into a large group of people that had
 23 deposited hazardous materials into the
 24 landfill.

25 Q. But I guess my question is more

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1 direct in that what was the environmental issue
 2 that concerned US EPA to contact you and say
 3 you need to come to Chicago and meet? What's
 4 the environmental issue that was causing the
 5 concern?

6 THE WITNESS: What was the legal
 7 document that --

8 MR. LEWIS: I can't really
 9 testify.

10 THE WITNESS: Oh.

11 MR. LEWIS: To the best of your
 12 knowledge.

13 BY MR. MERRILL:

14 Q. I'm not asking you about the legal
 15 document. I want to know what's the
 16 environmental issue? Was it air emissions, or
 17 was it, you know, a leaking underground storage
 18 tank? What was the environmental issue?

19 A. I think there was issues with the
 20 subsurface gases. I think there was concern
 21 for health and safety, immediate health and
 22 safety, from propane and methane, and other
 23 immediate safety issues.

24 That's why when we went to the
 25 EPA, the first order was that Steve Renninger

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1 gave a one-hour presentation on subslab
 2 distribution of gases.
 3 Q. What did -- what did Steve tell
 4 you with respect to the source of the methane,
 5 the VOCs, the TCE, whatever it was that was
 6 causing this problem?

7 A. South Dayton Dump.

8 Q. The South Dayton Dump?

9 A. Yes.

10 Q. And did he describe like where the
 11 South Dayton Dump or what was in the South
 12 Dayton Dump that was causing it?

13 A. I think part of his presentation
 14 to us was a short history of, you know, when,
 15 you know, it was originally a sand and gravel
 16 operation, it created a big hole in the ground.
 17 It was filled over the years with different
 18 waste products, and then it was, you know,
 19 brought up to level and then developed. So he
 20 kind of gave, I think, a snapshot view of the
 21 history of the site, and of such they said that
 22 there's waste underneath.

23 Q. And did he say that there's waste
 24 underneath the Valley Asphalt property?

25 A. Yes.

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1 Q. And that's part of the South
 2 Dayton Dump in US EPA's mind; is that correct?

3 A. I believe so, yes.

4 Q. And so since you've got buildings
 5 on top of the former South Dayton Dump, it
 6 created -- it creates vapors that build up in
 7 your buildings, and that's -- that was alarming
 8 to US EPA; is that the basis of it?

9 A. Yes, that's a fair statement.

10 Q. Was there any other discussion
 11 about the barrels from Ottoson Solvents being
 12 located right underneath your office building
 13 and perhaps causing a problem?

14 A. The barrels were never directly
 15 addressed. It was the vapor. There was
 16 mention of long-term remediation of the water
 17 underneath the site. The first step is the
 18 immediate concern, health and safety of vapors,
 19 because those are close to the surface. Those
 20 can penetrate into a building.

21 The federal EPA's long-term stance
 22 is fix the vapor issue, then the water issue
 23 will be next.

24 Q. Was there any discussion at this
 25 US EPA meeting of any disagreement with Ohio

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1 EPA on the investigation of barrels underneath
 2 the Valley Asphalt property?

3 A. I'm not aware of any discussions
 4 between the Ohio EPA and the federal EPA.

5 Q. So you have never heard of that
 6 issue?

7 A. No.

8 Q. You mentioned you are the head of
 9 environmental compliance, is that right, for
 10 Valley Asphalt?

11 A. For all the corporations, yes.

12 Q. For all the corporations? Are you
 13 familiar with a regulation in Ohio called --
 14 it's commonly called Rule 13?

15 A. Yes, I've heard of it.

16 Q. And am I correct that Rule 13
 17 basically says you can't build or excavate on
 18 top of a closed landfill?

19 A. That is correct.

20 Q. Did you -- did Valley Asphalt ever
 21 approach Ohio EPA and try to build silos on the
 22 Valley Asphalt property, and Ohio EPA pushed
 23 back and said you have to go through a Rule 13
 24 authorization?

25 A. We have had discussions with them

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1 directly pertaining to Rule 13 construction.

2 Q. Did you build the silos on the
3 Valley Asphalt property?

4 A. Yes, silos were built. There's
5 existing silos, yes.

6 Q. When were they built?

7 A. The Bowser-Morner report is
8 September 29th, 1987. So I want to say in
9 close proximity to that. 1987 plus or minus a
10 year maybe, six months plus or minus.

11 Q. Did you get a Rule 13
12 authorization from Ohio EPA to build the silos?

13 A. I have not seen that document
14 pertaining to that time frame in 1987 or '86.

15 (Thereupon, Deposition Exhibit 27,
16 memo from Matt Justice to Karen Cibulskis dated
17 January 24, 2006, was marked for purposes of
18 identification.)

19 MR. MERRILL: I have handed the
20 witness what has been identified as Deposition
21 Exhibit 27. It's a memo from Matt Justice to
22 Karen Cibulskis at US EPA, Matt Justice being the
23 site coordinator for Ohio EPA. It's regarding the
24 South Dayton Dump, Valley Asphalt reconnaissance
25 brief dated January 24, 2006. It has a Bates

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1 number of Ohio EPA-PRR-005572.

2 BY MR. MERRILL:

3 Q. And Mr. Crago, have you ever seen
4 this document?

5 A. I believe I have seen this
6 document.

7 Q. And in the document, it mentions
8 that Matt Justice and Dale Farmer of Ohio EPA
9 visited Valley Asphalt on January the 20th,
10 2006. Do you see that in the middle of the
11 document where it talks about sewer excavation
12 location?

13 A. Yes, I see that sentence.

14 Q. It says that the approximate
15 location of the excavation was identified using
16 the following sources, the photographs and
17 location sketch and the TCA report, which we
18 just discussed as Exhibit 26, Montgomery County
19 aerial photograph from 2000, interviews with
20 Valley Asphalt employees, including Hutch
21 Rogge. Do you know who Hutch Rogge is?

22 A. Yeah, Hutch Rogge is a project
23 superintendent for John R. Jurgensen Company.
24 He's still currently employed.

25 Q. Is he located at plant six?

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1 A. He is not.

2 Q. Where is his business location?

3 A. His office is in Enon, Ohio. He
4 was -- I think under previous questions, they
5 were asked where did the office help go. They
6 were relocated to Enon, and Hutch would have
7 been one of the people that got relocated.

8 Q. So it indicates that Valley
9 Asphalt wells, it says the TCA reports stated
10 that two wells were present at Valley Asphalt
11 at the time of the sewer excavation, a drinking
12 water well and a production well.

13 A. Uh-huh.

14 Q. Do you see that?

15 A. Yes, sir.

16 Q. What's the purpose for the
17 production well?

18 A. There's a high flow well on site
19 that we will use to fill I'll call them tanker
20 trucks, like big water trucks. Sometimes we
21 can use them to water the roads on site if it's
22 very dusty. We also use the front end loader
23 with our small pit in the back to water our
24 roads, just depending on availability of either
25 the pieces of equipment. And then that water

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1 in a large construction truck could be used for
2 other construction aspects.

3 Q. Is that production well still
4 there?

5 A. I believe it is, yes.

6 Q. This memo also mentions a drinking
7 water well.

8 A. Yes.

9 Q. Does that refresh your
10 recollection of whether there's a drinking
11 water well there on the property?

12 A. I've never seen a drinking well on
13 site. I know the water that came to the
14 offices, the water that goes to the plant, is
15 non-potable. Since my employment at Valley
16 Asphalt, it was always a -- you know, water
17 that comes in is used for the toilets only,
18 don't drink it. And then there was potable
19 water in the offices and control buildings and
20 test lab and everything else.

21 Q. Do you have any groundwater
22 monitoring wells on site?

23 A. I believe there are monitoring
24 wells that were installed and are being
25 monitored by Conestoga-Rovers.

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1 Q. Were you provided with the results
2 of those monitoring wells?

3 A. I've seen some results over the
4 years, but it's not consistent, and they are
5 there for their testing, so I normally don't
6 see those results.

7 Q. They don't routinely provide them
8 to you as a courtesy?

9 A. I don't know how often they test
10 them, so if I get a report once every four or
11 five years, I don't know if that's all the
12 reports or if that's the only time they test.
13 So I've seen some reports, but I don't know if
14 it's one report in ten or I have gotten every
15 report. I don't know their frequency of
16 testing, but I have received some reports.

17 MR. MERRILL: I don't believe we
18 received any groundwater monitoring data in our
19 requests for documents, so to the extent that
20 they do exist, I'd like to see them.

21 MR. LEWIS: Yeah. Yeah.

22 BY MR. MERRILL:

23 Q. Do you recall if there have been
24 any detections in those groundwater monitoring
25 wells?

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1 times. But whenever we have to do a test, they
2 will come in and collect it in a canister as
3 you are describing.

4 Q. So that's the only sampling port
5 on the Valley Asphalt property for vapor
6 testing?

7 A. That's the only site that we test.
8 Conestoga-Rovers does a lot of different tests,
9 and I'm not privy to what they are looking for
10 or what they are testing. I know they have
11 wells. I thought they were pulling liquid out
12 of them, but I don't know. I don't know if
13 they are testing vapor or if they are testing
14 liquid underneath.

15 Q. What does the latest vapor testing
16 show in that building?

17 A. The tests are very clear. They
18 show that our vapor mitigation system is
19 functioning properly. It's preventing any
20 vapors from building up under the slab.

21 Q. What type of -- what's the vapor
22 mitigation system that you have installed in
23 that building?

24 A. As far as a description, it's --
25 basically it looks like a radon mitigation

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1 A. I don't recall. I'm not sure what
2 the test results have shown.

3 Q. Do you know what they are testing
4 for?

5 A. I don't.

6 Q. You had mentioned in previous
7 testimony regarding all the steps that Valley
8 Asphalt has to do to comply with US EPA's vapor
9 monitoring.

10 A. Yes.

11 Q. And you generically mentioned
12 monitoring. So my question is what type of
13 monitoring are you doing?

14 A. It's vapor monitoring only.

15 Q. And when you say vapor monitoring,
16 is that putting like canisters in the ground
17 and collecting vapors?

18 A. Yes. We have -- we have only left
19 one building on site. All the other buildings
20 that were removed are obviously not tested.

21 The one building on site that we do test is the
22 control building for the plant. In the
23 basement of that plant, they have drilled
24 through the concrete and actually installed a
25 collection spigot. It's kept closed at all

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1 system where you have an eight-inch PVC pipe,
2 drill an eight-inch hole in the floor, the pipe
3 is inserted, goes down through the floor into
4 the subslab, it's sealed. And then the pipe
5 comes up, goes through the sidewall, and goes
6 up above the building, and then there's a fan
7 system that prevents any vapors from
8 accumulating under the slab.

9 (Thereupon, Deposition Exhibit 28,
10 phone conversation record dated June 12, 2012,
11 was marked for purposes of identification.)

12 BY MR. MERRILL:

13 Q. Let me know when you're ready,
14 Mr. Crago.

15 A. Okay.

16 Q. Have you ever seen that document
17 before?

18 A. I have not.

19 MR. MERRILL: I have handed the
20 witness what has been marked Deposition Exhibit
21 28, which is an interoffice phone conversation
22 record from Ohio EPA, Laura Marshall, regarding
23 a conversation that she had with David Scardino
24 at TCA Environmental and Karen Cibulskis at US
25 EPA on June 12, 2012, subject South Dayton Dump

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1 and Landfill site, methane mitigation work plan
2 for Valley Asphalt building number two, drums
3 found in 2000 sewer line excavation at Valley
4 Asphalt.

5 BY MR. MERRILL:

6 Q. It indicates that Mr. Scardino
7 called Ohio EPA and US EPA to get guidance on
8 the mitigation work plan required for the
9 explosive gas, methane, exceedences under the
10 slab at Valley Asphalt building two, which is
11 also known as the Quonset hut building/Ottoson
12 Solvents building. Do you see that?

13 A. Yes, I see that.

14 Q. Was Mr. Scardino calling on behalf
15 of himself, or was he calling on behalf of
16 Valley Asphalt?

17 A. Himself.

18 Q. So you didn't authorize
19 Mr. Scardino to reach out to Ohio EPA and US
20 EPA to get guidance in 2012 on this mitigation
21 plan?

22 A. No. I didn't -- I was not aware
23 he was conversing with them, so -- as
24 previously stated, I hadn't spoken to him in
25 quite a long time.

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1 there's barrels still there?

2 A. Personally, yes.

3 (Thereupon, Deposition Exhibit 29,
4 email string, the first email on the document
5 from Madelyn Smith to Leslie Patterson sent
6 April 7, 2014, was marked for purposes of
7 identification.)

8 THE WITNESS: Okay. I've read the
9 document that was Exhibit Number 29.

10 BY MR. MERRILL:

11 Q. Have you seen this document
12 before?

13 A. I have not.

14 MR. MERRILL: For those on the
15 phone, this is a memo, or a letter, email, from
16 Madelyn Smith, who is with Ohio EPA, to Leslie
17 Patterson at US EPA, dated April 7, 2014,
18 regarding the Scardino report, and it
19 references the Scardino phone memo of June 12,
20 2012, which is Exhibit 28.

21 BY MR. MERRILL:

22 Q. According to Madelyn Smith of Ohio
23 EPA in the second paragraph, she indicates that
24 Dave Scardino met with Ohio EPA to discuss this
25 barrel and trenching issue. Do you see that?

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1 Q. So it's probably surprising that
2 he reached out in 2012 to Ohio EPA and US EPA
3 to talk about this without talking to you about
4 it?

5 A. Yes, it's news to me. I wasn't
6 aware of it.

7 Q. In number two, it indicates
8 Mr. Scardino said that he was also the
9 consultant for Valley Asphalt when drums were
10 unearthed during the sewer line excavation in
11 May 2000. It says he said that the area behind
12 the Valley Asphalt office building, building
13 one, is a, quote, unquote, honeycomb of barrels
14 from Ottoson Solvents. Do you see that?

15 A. Yes, I see that.

16 Q. Do you have any reason to believe
17 that Mr. Scardino is not correct in his
18 characterization of honeycomb of barrels near
19 building one?

20 A. No, I think that would be
21 consistent with the trench that we were
22 digging, and we struck barrels in that area, so
23 that statement is consistent with what we have
24 actually seen.

25 Q. But you -- do you believe that

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1 At about two-thirds of the way down, the
2 statement that says in the meeting notes
3 attached, taken by Mike Starkey, the current
4 manager of DERR and southwest district office,
5 he is outlining Valley Asphalt's steps forward.

6 A. Okay.

7 Q. He is outlining Valley Asphalt's
8 steps forward as indicated by Dave Scardino
9 during the meeting.

10 A. Okay.

11 Q. It says at the end Dave is
12 indicating that they only have about 60 feet of
13 the sewer line left to install, but they may
14 consider abandoning it and continuing to use
15 the septic system. Valley Asphalt didn't
16 determine the extent of the drums. They
17 stopped the line when they encountered the
18 drums, got rid of the ones that he had taken
19 out and the soil they had taken out, and
20 backfilled with clean material. Do you see
21 that?

22 A. Yes, I do.

23 Q. So is -- this is 2014 time frame,
24 and Mr. Scardino is talking to Ohio EPA.

25 A. Okay.

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1 Q. And you are not aware of any of
2 this?

3 A. No.

4 Q. In your meetings with US EPA or
5 Ohio EPA, you've never had occasion to have a
6 conversation about further investigation of
7 these barrels?

8 A. No, it's never been brought up.

9 Q. So it would surprise you that Ohio
10 EPA wants the investigation and US EPA is not
11 pressing forward for the investigation?

12 A. Yes, it's very surprising. You
13 would think they would at least have
14 conversation with us. We are talking with them
15 about the site more current, so I'm very
16 surprised at the conversations. We would like
17 to be part of them, but we're not.

18 Q. What conversations are you having
19 with them right now regarding the site?

20 A. We would currently like to update
21 the site. As indicated in some of the previous
22 discussions, the plant is very old, and it's
23 not running at a very high efficiency. One is
24 because of its age, and then the other because
25 it's a batch plant.

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1 nothing in-depth.

2 Q. When is the last time you had a
3 conversation with US EPA regarding plant six?

4 A. It's -- well, I can tell you the
5 exact date, because they came to the site.
6 July 7th, 2016, we had a meeting at Dryden
7 Road, US EPA, Leslie Patterson, and she
8 brought, I want to say, one other person from
9 the US EPA's office, and then she also had
10 technicians from CH2M Consulting, so -- and the
11 reason to visit the site was to try and locate
12 potential well sites. That's what they told
13 us.

14 Q. Groundwater monitoring well sites?

15 A. I was assuming. My understanding
16 of the visit was that they are planning the
17 next step to go -- to remediate the subsurface
18 liquid issues, groundwater contamination in the
19 groundwater.

20 So the first step that they
21 required was the vapor remediation, and then
22 now they are going back after groundwater.

23 Q. How long did the meeting take?

24 A. It was very surprising. I bet
25 they were on site ten minutes.

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1 Newer technology with drum plants
2 allow more recycle to be used. Obviously the
3 plant is not balanced on site because the
4 recycle continues to grow. So that's an
5 indicator to us that we are not recycling
6 enough. So there has been a decision made to
7 try to upgrade the plant on site, and that is
8 being looked at.

9 Q. Prior to this deposition, did you
10 have any conversations with Jim Jurgensen about
11 this deposition?

12 A. Yes. Jim Jurgensen, II, yes.

13 Q. The second. And what did you guys
14 talk about?

15 A. I basically informed Jim that
16 there would be a deposition, kind of an inquiry
17 of all the available information. I told him
18 we had cooperated and tried to locate, compile,
19 forward all the information that we could find.

20 I asked Jim, I go are there any
21 other locations where there may be some old
22 files stored, and he said there was not. I
23 think he had a couple files in his office,
24 which I saw marked in here as evidence. So we
25 have had, you know, a few brief conversations,

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1 Q. Came all the way from Chicago to
2 meet with you guys for ten minutes?

3 A. I don't know that she is based out
4 of Chicago. US EPA has offices in Cincinnati.
5 I don't know where all the different people are
6 involved. Their site visit on Valley's
7 property was ten minutes. They were visiting
8 all the surrounding sites that we don't own
9 that are still part of the overall
10 investigation. So I had a feeling that they
11 were going to be there a couple days maybe, but
12 our portion of it only took, like I said, ten
13 minutes maybe.

14 Q. So did they walk around the site,
15 or did they just meet you at like a trailer and
16 talk to you about --

17 A. We met at the control building for
18 the asphalt plant, and then we did not a full
19 perimeter walk, but they kind of walked toward
20 the site where they used to have the auto
21 salvage yard behind our property to the south,
22 we walked to that fence line, looked around.
23 We walked the berm to the west towards the
24 river.

25 And we didn't walk all the way to

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1 the front, because they drove in that
 2 direction, so they said there's really not much
 3 to see here. You know, the buildings are gone.
 4 There's one control building. There's an
 5 asphalt plant. There's some storage stock
 6 piles. And they were satisfied with what was
 7 available.

8 Q. So they were looking for well
 9 locations to sink a well on your property; is
 10 that --

11 A. That's my understanding, yes.

12 Q. And they wanted to identify a
 13 location that they could access and not
 14 interfere with your operations or --

15 A. I believe that would be correct.

16 Q. Have you heard back from them
 17 since this July 2016 meeting?

18 A. I have not heard back from them.

19 Q. What about Ohio EPA, when is the
 20 last time you've talked to Ohio EPA about plant
 21 six?

22 A. I'm currently directly talking to
 23 them about what I'll call the new plant six,
 24 our desire to upgrade. So I'm -- probably
 25 within the last week I've talked to Ohio EPA

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1 division about upgrades.

2 Q. Which division?

3 A. Hazardous waste, Title 13, that
 4 you referenced earlier.

5 Q. Who did you talk to?

6 A. I don't have her name with me.

7 I'll have to acquire that.

8 Q. Did Ohio EPA indicate that you
 9 would need to get a Rule 13 authorization to do
 10 your upgrade?

11 A. Yes.

12 Q. And why would you need a Rule 13
 13 authorization based on Ohio EPA, or what did
 14 Ohio EPA say why you needed one?

15 A. We had verbal discussions first
 16 with the office located here in Dayton, and
 17 internal to their office they were split.
 18 There was a group that said it's not required.
 19 You're not digging down. You're basically
 20 placing an asphalt plant. You're not changing
 21 the grade. You're not digging. You're not
 22 doing anything to the existing.

23 There was more conservative that
 24 said well, let's go through the Rule 13 and do
 25 a full review. So in discussions with them, we

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1 agreed to do the Rule 13 just so there's no
 2 questions or concerns or, you know, if it was
 3 ever brought up later, that it was thoroughly
 4 discussed.

5 Q. So Ohio EPA believes you need a
 6 Rule 13 authorization because there's a closed
 7 landfill underneath the Valley Asphalt
 8 property; is that correct?

9 A. Yeah, that's a fair statement.

10 Q. When is the last time you had a
 11 conversation with Ohio EPA about the barrel
 12 excavation?

13 A. I don't even remember. I mean,
 14 it's been six, eight, ten years. I don't
 15 recall a direct conversation about barrels.

16 Q. Have you had any conversations
 17 regarding the Valley Asphalt site there, plant
 18 six, with anyone from what I'll call the PRPs
 19 in this case, that would be Hobart, Illinois
 20 Tool Works, NCR, Kelsey-Hayes, TRW?

21 A. It seems like most of the
 22 conversation comes directly from Illinois Tool
 23 Works. It seems like they are kind of the
 24 spokesperson for the PRP. And most of the
 25 correspondence comes through, you know, emails

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1 or, you know, we have shown a lot of the back
 2 and forth, you know.

3 And then their investigation team,
 4 which is Conestoga-Rovers, I believe, is -- it
 5 seems like they are on site a lot checking
 6 their wells and, you know, oversight.

7 Q. So do you talk to Ken Brown at
 8 Illinois Tool Works?

9 A. Yes, I believe that's the name
 10 that's -- he usually pens the letters or is
 11 making the contact.

12 Q. When is the last time you talked
 13 to him regarding the site?

14 A. It's been -- it's been probably a
 15 couple years at least. I don't think there's
 16 been any recent correspondence that I've had
 17 with him.

18 Q. Do you recall like what the
 19 purpose of or the subject of your discussion
 20 was last time?

21 A. It seemed like they keep
 22 revisiting with, you know, we think you are
 23 involved because you own the land, and then we
 24 kind of go through a full discourse of we have
 25 never put anything in the site. Our current

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Exhibit 3.C.1.

Exhibit 3.C.

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1 process does not have waste. We have been
 2 trying to take care of our footprint and do the
 3 right thing for the environment. And then it's
 4 quiet for a while, then it will come back again
 5 where they try to -- I think they want us to
 6 participate, or be part of the PRP.

7 Q. And does ITW or Conestoga-Rovers
 8 ever, you know, contact you and talk to you
 9 about the barrel excavation, whether there's
 10 barrels still there and whether they can go in
 11 and conduct a more extensive investigation?

12 A. Yeah, there were discussions
 13 probably three or four years ago, and then
 14 there was that time frame that I referenced
 15 earlier where I thought it was the EPA, and I
 16 don't know if Conestoga was involved, and they
 17 came out and they dug four test sites. I can
 18 give you the exact date.

19 Q. If you could, please.

20 A. 10-8 of '08, the Ohio EPA, and I
 21 don't know what other divisions through the PRP
 22 or Conestoga-Rovers was involved, but they
 23 wanted to come out on site and dig a couple
 24 test sites to see if they could locate
 25 anything. Three of the sites they didn't find.

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Exhibit 3.C.

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1 The fourth site, where I told them to dig,
 2 where I knew we had seen barrels previously,
 3 they found one barrel. That was removed from
 4 the trench and I think taken for testing.

5 Q. Do you know whether the tests came
 6 back detecting anything?

7 A. I don't recall that I saw the test
 8 results on that. That was not -- that was not
 9 our --

10 Q. Who disposed of the barrel?

11 A. I don't know. There was a
 12 consultant involved. I would guess it to be
 13 Conestoga-Rovers, but, again, I don't know. I
 14 know the EPA was involved with it, and they
 15 requested that they could come on site, dig
 16 some test pits, and they did.

17 Q. Have you had any conversations
 18 with an attorney by the name of Larry Silver?

19 A. The name is familiar. I think
 20 I've seen him on correspondence, but I don't
 21 know that I've directly spoken to him.

22 MR. LEWIS: He knows I would kill
 23 him if you did. Sorry.

24 THE WITNESS: I don't think I've
 25 directly spoken to a Mr. Silver.

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Exhibit 3.C.1.

Exhibit 3.C.

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1 MR. LEWIS: I apologize.

2 BY MR. MERRILL:

3 Q. Let me ask you a couple questions
 4 about the site.

5 A. Okay.

6 Q. I'm getting close here. For plant
 7 six, do you have to file TRI reports? Do you
 8 know what a TRI report is, toxic release
 9 inventory report?

10 A. Yeah, toxic release. We do not.

11 Q. SARA Title III reports?

12 A. We do file.

13 Q. What do you file on? What
 14 chemicals, hazardous chemicals, do you have to
 15 list?

16 A. We have fuel oil. We have asphalt
 17 cement. It's hazardous because of the
 18 temperature. I think I also may include some
 19 of the maintenance oils. So I think those are
 20 the major components that we deal with.

21 Q. Have you filed SARA Title III
 22 reports for those chemicals since the
 23 implementation of the SARA Title III reporting
 24 program?

25 A. Yeah, I believe it's a yearly

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Exhibit 3.C.1.

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1 report that we have to file on March 1st.

2 Q. Right. I guess my question is for
 3 the last 15, 20 years, have you always filed
 4 the report for those chemicals? Has it changed
 5 any, like --

6 A. I see what you're saying.

7 Q. -- where you used to have to file
 8 because we had an ammonia tank, or something
 9 like that?

10 A. I don't think we have changed our
 11 chemical composition on site, because, like I
 12 said, we are relatively basic and
 13 straightforward with the components that we
 14 deal with. I probably have included the citrus
 15 based d-limonene at one point. But again, we
 16 are not really actively testing that anymore.

17 Q. Do you have a hazardous waste
 18 generator ID number for plant six?

19 A. We have a hazardous waste ID
 20 number that allows us to burn recycled oil. So
 21 I wouldn't say it's a generator ID, but it's a
 22 handling -- it's permission through the Ohio
 23 EPA to handle waste oil as a fuel source.

24 Q. You don't generate any hazardous
 25 waste at plant six?

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1 A. No.
 2 Q. The solvent that you use to test
 3 your asphalt is not a hazardous waste?
 4 A. If I was actively disposing of it,
 5 it would be hazardous waste. We recycle 100
 6 percent of it now, so it's -- it's a -- it's a
 7 source for us to reuse that product.
 8 Q. Where do you get the fuel oil that
 9 you burn on site?
 10 A. I think there's one or two main
 11 suppliers when we run fuel oil. You said fuel
 12 oil?
 13 Q. I'm sorry. The oil that you burn
 14 that you have an Ohio EPA permit for.
 15 A. Okay. There's a local company
 16 here in Dayton that we use, I think, a lot for
 17 that source, or we did before natural gas came
 18 down so much.
 19 Q. What's the name of that company?
 20 A. It was originally titled
 21 Perma-Fix, and I believe now it's called Clean
 22 Water, and they are a -- I think they collect
 23 different oil products, they test it, they
 24 remanufacture it, and then sell it as a fuel
 25 source.

1 Q. Do you have any air permits there
 2 at plant six?
 3 A. We do have an air permit to run
 4 the plant.
 5 Q. To run the plant for the asphalt
 6 plant?
 7 A. Yes, sir.
 8 Q. I believe you testified earlier
 9 you do not have an NPDES permit?
 10 A. We do have an NPDES permit.
 11 Q. You do?
 12 A. Yes.
 13 Q. And is that for direct discharge,
 14 or is it a storm water permit?
 15 A. It's a storm water. Those were
 16 the pipes where I think I indicated earlier
 17 that we do test, and we test for suspended
 18 solids.
 19 Q. You mentioned you started in what,
 20 1993?
 21 A. That is correct.
 22 Q. What did Valley Asphalt look like
 23 in '93 as compared to what it looks like now?
 24 A. It's very similar in makeup,
 25 where, you know, we produce -- we take sand and

1 gravels, we run them through hot mix asphalt
 2 plants, and we do road construction. I'd say
 3 the company maybe has grown a little bit in
 4 size. I don't know percent-wise or -- it's
 5 privately held, so I don't know the dollar and
 6 cents-wise, but the overall quantity of plants
 7 may -- asphalt plants I think is reduced,
 8 because rather than having a multitude of
 9 plants, we found it to be more efficient to
 10 have less quantity, but higher efficient
 11 plants, higher production facilities.
 12 Q. You mentioned that you saw an auto
 13 salvage yard just south of plant six; is that
 14 correct?
 15 A. Yes.
 16 Q. Like a junkyard, I assume?
 17 A. Yes.
 18 Q. Auto junkyard?
 19 A. Yeah, there was cars sitting on
 20 site.
 21 Q. Approximately how many cars would
 22 you say?
 23 A. 100.
 24 Q. When were those cars removed?
 25 A. I would guess maybe late 1990s,

1 1998, maybe 2000.
 2 Q. Do you know what happened to them?
 3 A. I do not.
 4 Q. Just one day you showed up at
 5 plant six, and it's like there are no more cars
 6 over there?
 7 A. They removed them in a very fast
 8 manner. I remember it was, you know, solid
 9 cars, and then -- and I don't go to the site
 10 every day, but I showed up two weeks later, and
 11 they're gone. So they were -- it was a clear
 12 lot.
 13 Q. Did it appear like they buried
 14 them on site?
 15 A. No, I don't think they buried
 16 them.
 17 Q. Have you guys ever taken a survey
 18 of your property? There was a question early
 19 on about property boundaries, the property
 20 boundaries for Valley Asphalt.
 21 A. Yes. Yes. Yes.
 22 Q. My question is have you ever
 23 conducted a property survey for that property?
 24 A. I would say our company has, our
 25 survey department. We have a survey

1 department. I would say at one point they
 2 probably have surveyed the property. And
 3 sometimes they will do it to check fence lines,
 4 sometimes they will do it to check other
 5 concerns.

6 Q. Do you know what parcel numbers
 7 that Valley Asphalt owns for plant number six?

8 A. I don't.

9 Q. There was a previous exhibit that
 10 showed a parcel number I believe 5054.

11 A. Correct.

12 Q. You don't know whether that is the
 13 parcel number for the property that Valley
 14 Asphalt owns?

15 A. No. I think I know at one point
 16 there was some consolidation of parcel numbers,
 17 so my -- the two maps that I brought today and
 18 I outlined were my current -- my understanding
 19 of our current property ownership and
 20 boundaries.

21 Q. Is plant number six property owned
 22 by the Valley Asphalt Corporation?

23 A. Yes.

24 Q. You mentioned baghouse dust.

25 What's the chemical analysis of the baghouse

1 dust?

2 A. It would be a very high percentage
 3 of either limestone or natural sand and gravel,
 4 very, you know, fine in texture and size. We
 5 actually design with it. So when we do mix
 6 designs in the lab, we will include one and a
 7 half percent, two percent, one percent baghouse
 8 dust, because it's part of the process that
 9 comes back to us.

10 Q. Do you ever put any additives into
 11 your production? I know you mentioned those
 12 specialty additives.

13 A. The SBS, polymers.

14 Q. The polymers. But besides that,
 15 any other additives like barium or anything
 16 like that for your product because a certain
 17 customer needs the product to do a certain --
 18 have a certain characteristic or quality?

19 A. No. Definitely not barium. I've
 20 never heard of that being an additive. But no,
 21 our raw components are pretty consistent. We
 22 did an experiment years ago in Kentucky with
 23 ground tire rubber, but it was not at this
 24 facility.

25 Q. When was the baghouse installed?

1 A. I show when we purchased the plant
 2 that's on site now, December 8, 1986. I think
 3 those are documents that we forwarded back
 4 through. But part of that was the asphalt
 5 plant, and then I'm pretty sure there was
 6 verbiage in there for the baghouse. So I feel
 7 confident at that time we definitely had a
 8 baghouse incorporated. We may have had one
 9 prior to that, but I don't have physical record
 10 of it.

11 Q. You mentioned Bowser-Morner. They
 12 did some work for you guys?

13 A. Yes, sir, they did.

14 Q. Who is the main contact person
 15 that you worked with at Bowser-Morner?

16 A. Katherine Beach was kind of our
 17 project manager for the vapor mitigation.

18 Q. Is she still with Bowser-Morner?

19 A. Yes, she is.

20 Q. Is that in the Cincinnati office?

21 A. No, they are in Dayton.

22 MR. MERRILL: Let's go ahead and
 23 take a five-minute break.

24 (Recess taken.)

25 (Thereupon, Deposition Exhibit 30,

1 handwritten notes, was marked for purposes of
 2 identification.)

3 MR. MERRILL: Let's go back on the
 4 record. Folks, if anyone is still on the
 5 phone, we are going back on the record. I have
 6 handed the deponent an exhibit marked
 7 Deposition Exhibit 30, and it looks like it's a
 8 scale paper with Valley Asphalt's name on it.
 9 It looks like something you would write up a
 10 job on.

11 BY MR. MERRILL:

12 Q. Mr. Crago, do you recognize that
 13 handwriting?

14 A. Yes.

15 Q. Whose handwriting is that?

16 A. That looks like it's my
 17 handwriting.

18 Q. By looking at the handwritten
 19 notes, can you tell what this is regarding?

20 A. This looks like notes I would have
 21 taken either during a phone conversation or a
 22 meeting. It looks like I was -- maybe the
 23 company names on the top left, I was trying to
 24 show who is participating in the meeting. Then
 25 there's some other notes.

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1 It says indirect costs, scope of
 2 work, good faith offer. So it looks like notes
 3 where I was sitting in a meeting and tracking
 4 some of the things that were being discussed.

5 Q. You don't recall why you wrote
 6 down NCR or TRW?

7 A. If I wrote those down, they were
 8 probably either on the phone or they were at
 9 the meeting that this was pertaining to.

10 Q. But you don't remember anything in
 11 particular about NCR or TRW?

12 A. I do not.

13 (Thereupon, Deposition Exhibit 31,
 14 handwritten notes, was marked for purposes of
 15 identification.)

16 MR. MERRILL: I have handed the
 17 witness what has been marked Deposition Exhibit
 18 31, more handwritten notes, but it also has the
 19 card of Matt Justice of Ohio EPA photocopied
 20 over top of it.

21 BY MR. MERRILL:

22 Q. Do you recall -- do you recognize
 23 the handwriting on Exhibit 31?

24 A. This looks like my handwriting
 25 again, and the letterhead says Valley Asphalt,

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1 which looks like a notepad I might have had in
 2 the field or something.

3 Q. And you notice that Matt Justice's
 4 business card is attached here.

5 A. Yes, I do see that.

6 Q. And it says October 8, 2008.

7 A. Yes, sir.

8 Q. Does that maybe jog your memory as
 9 to a conversation you might have had with Matt
 10 Justice at Ohio EPA?

11 A. Not the conversation, but I would
 12 say this is indicating he was with the group
 13 that came out to the site and dug the four test
 14 pits and located the one drum.

15 Q. This is what you testified about
 16 earlier --

17 A. Yes.

18 Q. -- about there were -- Ohio EPA
 19 wanted to come out and dig four test pits, and
 20 they found one drum in one test pit when you
 21 told them right here --

22 A. Yes.

23 Q. -- this is where we drilled, dig
 24 right here?

25 A. Yes. There were several people

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1 there, so I don't know all the players. They
 2 said they wanted to come, and we have always
 3 tried to be open and helpful. And that was the
 4 one card I have, and I don't know if there was
 5 other entities represented there or -- I know
 6 there's a consultant that actually physically
 7 dug the hole and went down and extracted the
 8 barrel.

9 Q. Do you recall which consultant
 10 that was?

11 A. I don't.

12 (Thereupon, Deposition Exhibit 32,
 13 letter to Daniel Crago from the United States
 14 Environmental Protection Agency dated October
 15 19, 2012, was marked for purposes of
 16 identification.)

17 BY MR. MERRILL:

18 Q. I have handed you what has been
 19 identified as Deposition Exhibit 32, a letter
 20 from US EPA to you dated October 19th, 2012,
 21 regarding an administrative settlement
 22 agreement order on consent. Do you see that?

23 A. Yes, sir.

24 Q. I don't believe we've talked about
 25 this document before in your earlier testimony.

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1 Do you recall?

2 MR. LEWIS: I was going to say I
 3 thought we had, but I can't remember exactly to
 4 be honest. I thought Mr. Romine had used this
 5 as an exhibit, but I could be wrong with all
 6 the dates. I don't know.

7 THE WITNESS: I think we have
 8 talked about this, because it shows the 85,968
 9 dollar amount, and I think there was questions
 10 on whether or not we had paid anything to the
 11 federal EPA.

12 MR. LEWIS: I think you're right.

13 MR. ROMINE: It's different. I
 14 haven't asked about this.

15 MR. LEWIS: Is it different?

16 Okay.

17 MR. ANDREASEN: Yeah, it's
 18 different.

19 MR. MERRILL: So my question is --
 20 and this is a document, it's Bates stamped
 21 VA001438. Is that a Valley Asphalt document?

22 MR. LEWIS: Yeah, I believe it is.
 23 VA, yeah. I believe it is.

24 BY MR. MERRILL:

25 Q. Can you explain this document for

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1 me and why is it different than the other
 2 documents that were kind of provided about the
 3 same time that appear to be about the same
 4 subject?

5 A. I'm not sure why the document
 6 would be different than any of the other
 7 previous correspondence. My concern in this,
 8 briefly looking at it, it looks like the
 9 federal EPA is asking for the approximate
 10 amount of \$85,968.57 for costs they have
 11 already incurred. There's no time frames.
 12 They don't indicate that this is, you know, a
 13 two-week window or a two-year window or a
 14 ten-year window of incurred costs.

15 Q. I'm going to direct your attention
 16 to Exhibit 20.

17 MR. LEWIS: That's the unilateral
 18 order?

19 THE WITNESS: Okay, I have that.
 20 BY MR. MERRILL:

21 Q. So it appears that -- I mean, they
 22 both have in the subject line site spill
 23 identification number B, as in boy, 52B, as in
 24 boy. And the document that is Exhibit 32 dated
 25 October of 2012 is an administrative settlement

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1 BY MR. MERRILL:

2 Q. One last question. We talked
 3 about the barrel excavation and the soil tests.
 4 Do you remember that?

5 A. Yes, TCA.

6 Q. The TCA Environmental report, and
 7 there were some PCB detections. Do you recall
 8 those?

9 A. Yes.

10 Q. Any thought as to where or the
 11 source of those PCBs?

12 A. My first, foremost thought is
 13 that, you know, we don't deal with any of those
 14 type of products. Then my only recollection of
 15 hearing about those type of products would be
 16 through the depositions that I read from
 17 previous occurrences.

18 Q. But why would there be PCBs on the
 19 Valley Asphalt property that would show up in
 20 the soils?

21 A. The depositions that I read
 22 clearly stated that transformers were being
 23 brought on site and dismantled, liquids were
 24 being poured on the ground. I don't know where
 25 that occurred, and I -- even the time frame of

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1 agreement and order on consent, while Exhibit
 2 20 is dated March of 2013. It looks like it's
 3 a unilateral administrative order.

4 Was Exhibit 20, the unilateral
 5 order, issued after Valley Asphalt declined to
 6 enter into the administrative settlement
 7 agreement that was offered in October of 2012?

8 A. That timeline seems consistent,
 9 because this is October 2012, where the
 10 unilateral is March of 2013.

11 Q. Do you recall having any
 12 conversations with US EPA regarding the offer
 13 that's provided in Exhibit 32?

14 A. I'm going to check to see who
 15 penned it. It came from Tom Nash. I don't
 16 recall a conversation with Tom as far as this
 17 offer is concerned. Again, just looking at it,
 18 my initial concern would be there's no time
 19 that this is covering. It's just, you know,
 20 here is an \$85,000 bill for today.

21 MR. LEWIS: Can we go off the
 22 record for a second?

23 MR. MERRILL: Yeah.

24 (Thereupon, an off-the-record
 25 discussion was held.)

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1 occurrence is a little bit fuzzy with the
 2 deposition. The gentleman they were deposing
 3 was older. So it was kind of a general
 4 statement that it was very -- it was witnessed.
 5 But the exact location, I don't know that I
 6 knew that.

7 Q. And Valley Asphalt has been
 8 operating on the current Valley Asphalt
 9 property since 1956, did you say?

10 A. Yes, with -- I think some of the
 11 other -- like the buildings that we took down
 12 were inhabited by other companies. Like the
 13 individual who was remanufacturing the barrels,
 14 that was part of our eventual property. So in
 15 1956 when we were renting, our footprint was a
 16 lot smaller. When we purchased the property, I
 17 think our footprint spread out a little bit to
 18 its current locations.

19 Q. In '56, were there landfill
 20 operations going on on the Valley Asphalt
 21 property -- what is now the Valley Asphalt
 22 property?

23 A. I don't know. My understanding is
 24 the original location of the asphalt plant was
 25 closer to the front road, our entrance now. So

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1 I don't know what was going on further back on
2 the property.

3 MR. MERRILL: No further
4 questions.

5 MR. LEWIS: I just have a couple.
6 Do you mind if I go ahead?

7 MR. ANDREASEN: You might want me
8 to go first.

9 MR. LEWIS: You go first, that's
10 fine.

11 CROSS-EXAMINATION

12 BY MR. ANDREASEN:

13 Q. Mr. Crago, I just have a couple
14 questions --

15 A. Okay.

16 Q. -- about Exhibits 28 and 29. And
17 basically my questions are regarding the issue
18 of Mr. Scardino having conversations and
19 contact with the Ohio EPA. And it looks like
20 Exhibit 28 is from 2012 and Exhibit 29 is in
21 2014 and references a Scardino report.

22 A. Yes, I have those documents.

23 Q. If Mr. Scardino was acting in
24 those conversations and contacts on behalf of
25 Valley Asphalt --

1 action had to be submitted within 30 days.
2 So we immediately went and --
3 actually, my first steps were to say can we use
4 Conestoga-Rovers, they are on site, they are
5 familiar, they are doing testing, it would be
6 easy. And we approached them. They were
7 willing to do it, but they wanted to check with
8 the potential responsible party. And after
9 talking to whomever they were directly working
10 for, they felt it was a conflict of interest
11 and did not want to do our testing and our
12 management of our systems, and then we
13 immediately reached out to Bowser-Morner.

14 Q. And your previous testimony was
15 the meeting in Chicago was on April 9, 2013?

16 A. That is correct.

17 Q. So Valley Asphalt had done no
18 investigation or planning of any kind regarding
19 a vapor intrusion remedy prior to April 9,
20 2013; is that correct?

21 A. That is correct.

22 Q. So I guess I'm a little confused,
23 and you probably are too, when this phone
24 conversation record, Exhibit 28, dated June 12,
25 2012, indicates that Mr. Scardino was working

1 A. Okay.

2 Q. -- is there someone other than you
3 that he may have been working with at Valley
4 Asphalt?

5 A. That's a possibility, but I don't
6 think so. Because I spoke to Jim Jurgensen,
7 II, and kind of was very clear, you know,
8 what -- what is all the information available,
9 whether it's, you know, letters, written
10 documentation, anything like that.

11 So by the 2012, 2013, 2014 time
12 frame, you know, I was quarterbacking most of
13 the -- all of the conversations, all of the
14 operations, everything going on.

15 Q. When did Valley Asphalt begin
16 doing planning for any type of vapor intrusion
17 remediation?

18 A. It was days after our meeting in
19 Chicago with Tom Nash and Steve Renninger.
20 They put a very, very tight timeline on us of I
21 had to -- I had to name a project manager
22 external to our company and have a plan of
23 action submitted and approved within a very
24 tight window of -- the manager, I think, had to
25 be named within ten days. I think the plan of

1 on a vapor intrusion mitigation work plan on
2 behalf of Valley Asphalt.

3 A. Yeah, that's very puzzling to me.
4 When I saw the document today, I'm like that's
5 a new one I have not seen, and that's a
6 conversation I did not have, so --

7 Q. Okay.

8 A. It doesn't bother me. I'm never
9 opposed to, you know, whomever wants to look at
10 the site. But we have been very open and very
11 forthcoming with all of our conversations, all
12 of our meetings with the federal EPA, Ohio EPA,
13 Conestoga-Rover, the PRP, but, yeah, that was a
14 little surprising.

15 Q. To your knowledge, Valley Asphalt
16 never retained Mr. Scardino to do any vapor
17 intrusion investigation work; is that correct?

18 A. That is correct.

19 Q. So I think you indicated that
20 Valley Asphalt did retain Bowser-Morner to do a
21 work plan for vapor intrusion mitigation; is
22 that correct?

23 A. That is correct.

24 Q. Who did the actual work for the
25 vapor intrusion mitigation system?

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1 A. The installation?
 2 Q. Yes.
 3 A. That was completed by
 4 Bowser-Morner. I think they did the install --
 5 there was a subcontractor that worked on
 6 Bowser-Morner's behalf that I think physically
 7 drilled the concrete and placed the pipe.
 8 Q. A subcontractor?
 9 A. Yes, a subcontractor of
 10 Bowser-Morner. I don't remember the name.
 11 Q. And then just one brief question
 12 about Exhibit 30.
 13 A. Okay.
 14 Q. At the top of that, of the graph
 15 box --
 16 A. Yes.
 17 Q. -- it says EPA hyphen Nash.
 18 A. Yes, sir.
 19 Q. Would that represent that these
 20 notes were taken based upon a conversation or
 21 meeting that you had with Mr. Nash?
 22 A. Yeah, I would say he was involved
 23 in the meeting. I think I've only directly met
 24 with him once, so I'm assuming this is a phone
 25 meeting.

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1 Q. Okay. In the top left-hand corner
 2 of the actual graph box there's a name, it
 3 looks like, written down and then scratched
 4 out.
 5 A. Yes.
 6 Q. Can you tell what that is?
 7 A. It looks like it reads Steve
 8 McQuew, M small C capital Q U E W.
 9 Q. Do you know who that person is?
 10 A. I don't.
 11 Q. Do you know -- going down that
 12 column, if you will, the next handwriting says
 13 waste. Do you see that right above the word
 14 Cargill?
 15 A. I do.
 16 Q. Do you have any recollection as to
 17 whether or not that refers to Waste Management?
 18 A. I don't have a recollection.
 19 Q. Okay.
 20 A. My feeling is it's a company name,
 21 or a start of a company name, because it's in
 22 line with -- I've tried to keep track of who
 23 was there or who was on the phone.
 24 Q. Okay. And go down three more
 25 items, and there's a two-thirds something.

Hearings Transcribed
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1 A. Yes, it says two-thirds lake
 2 owned.
 3 Q. Do you know what that represents?
 4 A. I don't recall.
 5 MR. ANDREASEN: That's all I have.
 6 Thank you.
 7 THE WITNESS: Okay.
 8 REDIRECT EXAMINATION
 9 BY MR. LEWIS:
 10 Q. I just have a couple follow-ups.
 11 Mr. Andreasen did ask most of my questions. I
 12 just want to make clear in items 28 -- I'm
 13 sorry, Exhibits 28 and 29 -- Exhibits 28 and 29
 14 would be conversations Mr. Scardino had with
 15 Ohio EPA and US EPA.
 16 Your testimony is to the best of
 17 your knowledge Mr. Scardino was not working for
 18 Valley Asphalt at the time, and you had no
 19 knowledge of those conversations; is that
 20 correct?
 21 A. That is correct.
 22 Q. Okay. After those conversations,
 23 did anyone from Ohio EPA or US EPA contact
 24 Valley Asphalt to your knowledge or you
 25 personally as director of environmental and

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1 quality control regarding the issue of drums on
 2 the site or issues raised by Mr. Scardino in
 3 these two exhibits?
 4 A. No one has contacted me.
 5 Q. So other than the, I'm sorry,
 6 October 8, 2008, incident when Ohio EPA and the
 7 consultant was on site digging the test pits,
 8 you have had no communications whatsoever with
 9 anyone from Ohio EPA or US EPA regarding the
 10 barrels or drums -- and/or drums that were
 11 originally removed in 2000?
 12 A. That is correct.
 13 Q. Also you testified that Valley
 14 Asphalt hired Bowser-Morner to do the
 15 mitigation work plan pertaining to the vapor
 16 intrusion issue on site; is that correct?
 17 A. That is correct.
 18 Q. Do you know if Mr. Scardino was
 19 working for them or a subcontractor to
 20 Bowser-Morner, if you know?
 21 A. I was not aware of any contact
 22 with -- between David Scardino and
 23 Bowser-Morner.
 24 Q. Now, you've mentioned
 25 Conestoga-Rover, which I think you testified --

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1 your understanding was they were working for
 2 the main PRPs in this case?
 3 A. Yes, that's what they have
 4 directly told me.
 5 Q. Do you have any knowledge that
 6 Mr. Scardino was working with them either as an
 7 employee or as a contractor?
 8 A. I have no knowledge of them being
 9 combined or working together or a sub or
 10 anything.
 11 Q. Is it fair to say that you had no
 12 contact with Mr. Scardino whatsoever in at
 13 least ten years, or approximately ten years, if
 14 not more?
 15 A. That would be a fair statement,
 16 because he did the original barrel clean-up,
 17 and he did one other small project around the
 18 same time frame, but I don't know where he
 19 resides or where he works or where he went.
 20 MR. LEWIS: Okay. No further
 21 questions. Thank you.
 22 MR. ROMINE: Anybody on the
 23 telephone?
 24 MR. HEER: No questions.
 25 MR. THUMANN: No questions

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1 MR. BOYLE: No questions.
 2 MS. GALE: No questions.
 3 MR. LEWIS: Thank you.
 4 MR. ROMINE: I do have a couple
 5 follow-up questions, Mr. Crago.
 6 THE WITNESS: Okay.
 7 RECROSS-EXAMINATION
 8 BY MR. ROMINE:
 9 Q. Mr. Merrill had asked you about
 10 slag as an ingredient of asphalt. Do you
 11 remember that?
 12 A. Yes, sir.
 13 Q. And does Valley Asphalt use slag
 14 as an ingredient for asphalt?
 15 A. We have used slag as an
 16 ingredient.
 17 Q. The heavier slag or the lighter
 18 slag?
 19 A. We have used the lighter slag.
 20 Q. And during what time period?
 21 A. We are required to run slag for a
 22 skid resistant mix specific to the Ohio
 23 Department of Transportation, and we run a
 24 project maybe once every four or five years at
 25 one of our facilities in southwest Ohio.

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1 Q. So did plant six ever use slag?
 2 A. I don't recall any specific
 3 projects where we ran slag at Dryden Road.
 4 Q. And you say you only used that for
 5 a particular Ohio DOT contract?
 6 A. It's for a specific mix design.
 7 It's called an 803 anti-skid mix. It's a
 8 design actually specific to Mr. DeWine, who is
 9 in politics in Ohio. His daughter perished on
 10 a curvy road, and there was a specific mix
 11 design made up for friction, and my
 12 understanding it related to that accident.
 13 Q. So it's a specific mixture to
 14 enhance the non-skid qualities of the asphalt?
 15 A. That is correct.
 16 Q. Any other uses for slag as an
 17 ingredient in asphalt?
 18 A. The state of Indiana uses the
 19 bottom steel slag for surface mix for
 20 durability and skid resistance.
 21 Q. And does plant six make slag for
 22 that -- I'm sorry, make asphalt for that
 23 purpose?
 24 A. Plant six Dryden Road has never
 25 made hot mix asphalt for Indiana or this heavy

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1 steel slag.
 2 Q. To your knowledge, has plant six
 3 ever used slag as an ingredient of asphalt?
 4 A. I don't recall a specific project.
 5 Like I said, they are very hit and miss
 6 projects, once every three or four years. I
 7 don't recall any specific projects.
 8 Q. But you can't rule it out?
 9 A. I cannot rule that out.
 10 Q. Mr. Merrill had asked you about
 11 Exhibit 26, which is the full report done by
 12 TCA Environmental.
 13 A. Yes.
 14 Q. I think you testified that it was
 15 given to you recently?
 16 A. Yes.
 17 Q. Who gave it to you recently?
 18 A. That was forwarded to me by my
 19 attorney, Marty.
 20 Q. Have you received this from any
 21 other source -- from any source other than your
 22 attorney?
 23 A. I have not.
 24 Q. Did you see this full report when
 25 it was produced in the year 2000?

1 A. I did not see the original report
2 in 2000.
3 Q. So when you got it recently, that
4 was the first time you had seen the full
5 report?

6 A. That's the first time I've ever
7 seen that report.

8 Q. Mr. Andreasen had asked you about
9 a meeting in Chicago in April of 2013.

10 A. Yes.

11 Q. And we had talked about Exhibit 20
12 before, which is a letter from EPA March 22,
13 2013.

14 A. Okay.

15 Q. Was the meeting in Chicago in
16 April of 2013 related to this Exhibit 20, which
17 is the unilateral administrative order?

18 A. So your question is did the
19 March 22, 2013, letter prompt the meeting?

20 Q. Sure.

21 A. I believe it did. I don't
22 remember the exact correspondence, but I
23 believe we had a written notice, and we
24 immediately contacted counsel with the federal
25 EPA, Mr. Tom Nash, and I think I also had

1 direct phone conversation with Steve Renninger
2 with federal EPA also. He is the one that said
3 you need to meet immediately, here's two dates,
4 three dates, to pick from. And it was not a
5 matter of weeks. It was a matter of days.

6 Q. Okay. So when you say you
7 received written notice, you are talking about
8 the unilateral order that's been marked as
9 Exhibit 20?

10 A. I believe that's correct.

11 Q. And you contacted or someone on
12 Valley Asphalt's behalf contacted EPA?

13 A. Yes, I did.

14 Q. Okay. And EPA said you have got
15 to come meet with us?

16 A. Yes. Steve emphasized a direct
17 meeting. I said that's easy. Then he said
18 it's in Chicago. Here is the address. It's
19 with myself and Mr. Nash, and I believe they
20 had other people at the meeting.

21 Q. And that led to the meeting in
22 April of 2013 that you had talked about a
23 couple times earlier today?

24 A. Yes. Yes.

25 Q. I had asked you earlier about

1 solvents, and you mentioned there was an
2 orange-based solvent and TCE.

3 A. Yes.

4 Q. When you test the asphalt, is the
5 amount of orange solvent that you use similar
6 to the amount of TCE that was used earlier?

7 A. The volume used for both tests
8 would be very similar.

9 Q. And how much -- what is that
10 volume?

11 A. You typically would do three
12 washes of maybe a quart. So three quarts per
13 test.

14 Q. Did I understand you correctly
15 that you would test, what is it, an eight-pound
16 sample of asphalt?

17 A. The full sample we pull out of the
18 truck I think I previously mentioned might have
19 been 20 pounds.

20 Q. 20 pounds. Okay. Sorry.

21 A. The sample that we run an
22 extraction on for gradation is approximately
23 2,000 grams in weight.

24 Q. 2,000 grams. So that's two
25 kilograms. So about five pounds?

1 A. That would be a fair calculation
2 or weight.

3 Q. Okay. What's the difference
4 between the 20-pound testing weight and the
5 2,000-gram testing weight?

6 A. When we pull a sample out of a
7 truck to do quality testing, one of the tests
8 uses solvent to do the extraction. We also run
9 a pan sample for asphalt content that we use a
10 nuclear gauge, a sealed source nuclear gauge,
11 that reads hydrocarbons. We also use a
12 Marshall hammer that compacts samples that we
13 do bulk density testing on to tell us our air
14 voids and compaction effort. So the 20-pound
15 sample is broken down into smaller testable
16 sizes for several different tests.

17 Q. I see. And what's the weight that
18 you use specifically for the test that uses the
19 solvent?

20 A. We are about 2,000 grams.

21 Q. Okay. So that's the 2,000 gram
22 weight you were talking about earlier?

23 A. Yes.

24 Q. And how much solvent do you use a
25 year?

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1 A. It has changed over the years.
 2 It's somewhat based on production, you know,
 3 how much direct, you know, paving are we doing
 4 for the state where we have to run tests. I
 5 want to say we might run -- we might buy five
 6 barrels a year across the whole company.

7 Q. And how much of that is used at
 8 plant six?

9 A. Less than one percent, because we
 10 don't run a lot of state mix out of plant six.

11 Q. Did the proportion of state mix
 12 change over the years? In other words, did
 13 you -- going back in time, did you have more
 14 state mix coming out of plant six or less state
 15 mix coming out of plant six?

16 A. I would say it's consistent: It's
 17 not -- it's -- we do a fair amount of private
 18 work out of Dryden Road, but it seems like we
 19 don't do a lot of state work. That's been
 20 consistent over the years.

21 Q. Do you have somewhere a record of
 22 how much solvent is used at plant six?

23 A. I don't have record of that.

24 Q. Does that exist anywhere?

25 A. No.

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1 THE WITNESS: Okay.

2 RECROSS-EXAMINATION

3 BY MR. MERRILL:

4 Q. Plant six, who is the oldest or
 5 longest serving employee?

6 A. I would have to say that would be
 7 the -- me as their environmental director with
 8 oversight on the plant. I have been there 23
 9 years. Mike Shafer, the current supervisor on
 10 site, I think it's probably a little bit less.
 11 Oversight on that facility is definitely less.

12 He used to run a plant at, you
 13 know, a different location, not there. I
 14 think, you know, like the loader operators,
 15 they are relatively new, you know, five years,
 16 ten years.

17 Q. Is there anyone that you could go
 18 to if you wanted to find out some historical
 19 information about plant six because everyone
 20 knows this is the guy, because -- he's retired,
 21 but he knows everything about this operation
 22 because his tenure goes back the longest? Is
 23 there such a person?

24 A. The first person that jumps to
 25 mind is Mel Levy, who is deceased.

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1 Q. Is there anyone other than you
 2 that would have a better idea as to how much
 3 solvent is used at plant six?

4 A. I would have, I guess, the most
 5 direct knowledge, because I oversee the
 6 day-to-day environmental, and I also oversee
 7 all testing for the company, so --

8 Q. But some solvent is used at plant
 9 six --

10 A. Yes, sir.

11 Q. -- for testing purposes?

12 A. Yes.

13 MR. ROMINE: I think that's all I
 14 have. Thank you.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. LEWIS:

17 Q. I just want to clarify one thing
 18 for the record. When you just testified that
 19 some solvent is used at plant six, is that the
 20 citrus-based solvent?

21 A. Yes. Ever since I've started with
 22 the company in 1993, it's pretty much been the
 23 citrus-based solvent.

24 MR. LEWIS: Okay. Thank you.

25 MR. MERRILL: One final question.

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1 Q. Right.

2 A. Because he was the manager, he was
 3 environmental, he was -- his office was there.
 4 I really don't recall, you know, anybody else
 5 that would have, you know, a real large window
 6 that would have more information or different
 7 information.

8 Q. So you're the best we've got?

9 A. You couldn't ask for better, come
 10 on. No. Just because of the role, between
 11 quality, environmental, and duration, it gives
 12 me a pretty good scope.

13 MR. MERRILL: No further
 14 questions.

15 MR. LEWIS: Thank you.
 16 (Thereupon, the deposition was
 17 concluded at 6:05 p.m.)

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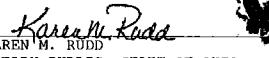
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1 I, DAN CRAGO, P.E., do hereby certify
 2 that the foregoing is a true and accurate
 3 transcription of my testimony.
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 8 Dated _____
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 25 Job: 170215KMR

1 STATE OF OHIO)
 2 COUNTY OF MONTGOMERY) SS: CERTIFICATE
 3 I, Karen M. Rudd, a Notary
 4 Public within and for the State of Ohio, duly
 5 commissioned and qualified,
 6 DO HEREBY CERTIFY that the
 7 above-named DAN CRAGO, P.E., was by me first duly
 8 sworn to testify the truth, the whole truth and
 9 nothing but the truth.
 10 Said testimony was reduced to
 11 writing by me stenographically in the presence
 12 of the witness and thereafter reduced to
 13 typewriting.
 14 I FURTHER CERTIFY that I am not a
 15 relative or Attorney of either party, in any
 16 manner interested in the event of this action,
 17 nor am I, or the court reporting firm with which
 18 I am affiliated, under a contract as defined in
 19 Civil Rule 28(D).
 20
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1 IN WITNESS WHEREOF, I have hereunto set
 2 my hand and seal of office at Dayton, Ohio, on
 3 this 23rd day of February, 2017.

4
 5 
 6 KAREN M. RUDD
 7 NOTARY PUBLIC, STATE OF OHIO
 My commission expires 5-21-2017
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